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Vice-Adm^l *Lestock's* Defence
TO THE
COURT-MARTIAL;

Giving a short View of
The NATURE of his EVIDENCE,
AS ALSO,
A RECAPITULATION of the
Evidence on the Crown-Side.

AND

A NARRATIVE of the Distresses and
Difficulties he has labour'd under since his Suspen-
sion, which were intended to have been finished,
and laid before the Court-Martial, with proper
Observations, and an Application made on the
Whole, had not the Court, after examining only
twenty-eight of his Witnesses, of a List of one
hundred and forty-eight, declared themselves sa-
tisfied, and so far determined the Cause before
them, as to resolve any further Evidence in Be-
half of the Prisoner unnecessary.

TOGETHER WITH

The SENTENCE on Vice-Admiral *Lestock*.

*Qui aut tempus quid postulet non videt, aut plura loquitur,
aut se ostentat, aut eorum quibuscum est rationem non
habet, is ineptus esse dicitur. TUL.*

He who either doth not see what is proper at that Time,
or talks too much, or boasts of himself, or mindeth not
with whom he is, that Man is said to be a Fool.

ERRATA in the DEFENCE.

- Pag. 5. l. 21, 22. *Instead of the Words*, And that from the Time of mine and my Division bearing away, ~~read~~, and that from the Time I, and my Division bore away.
- P. 21. l. 22. *Instead of the Word* continued, read continuing.
- P. 24. l. 26. *Instead of the Word* still, read Ship.
- P. 37. l. 27. *Instead of the Word* Esteem, read esteemed.
- P. 38. l. 9. *Instead of the Word* even, read except.
- P. 58. l. 7. *Instead of the Words* without giving any, read without any.
- P. 62. l. 26. *Instead of A f*, read A c.

RECAPITULATION.

- P. 74. l. 2. *Instead of* most, read almost.
- P. 75. l. 6. *Instead of* most, read almost.
- P. 79. *At the End of the second Line*, instead of I did make, read I did not make.
- P. 84. l. 8. *Instead of* he did know, read he did not know.

Vice Admiral *Lestock's*
D E F E N C E
TO THE
COURT-MARTIAL,

Giving a Short VIEW of the
NATURE of his EVIDENCE,



L O N D O N :

Printed in the YEAR M,DCC,XLVI,

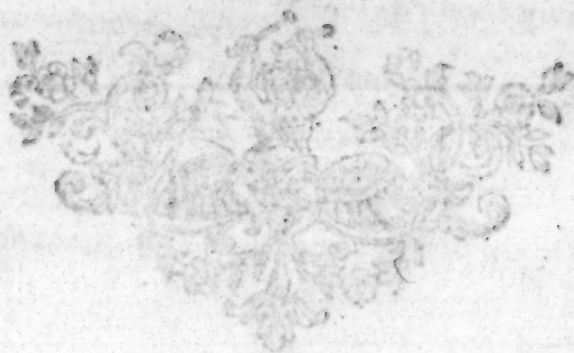
Vice Admiral Cockburn's

DEFENCE

TO THE

COURT-MARTIAL,

Giving a Short VIEW of the
NATURE of his EVIDENCE.



LONDON:

Printed in the YEAR MDCCLXVI.



THE
INTRODUCTION.

ADMIRAL *Mathews's* Charge, which was sent me by Command of the Lords of the Admiralty, and signed by their Secretary, in order for me to prepare to answer it, and to summon what Evidences I thought might be necessary to my Justification, is, what I must beg leave to read to the Court as preparatory, and in some measure essential towards the Defence I shall make to the Charge I am brought here to answer.

HEADS of the CHARGE made by Admiral Mathews, against the Conduct of Vice-Admiral Lestock, before and during the Action with the French and Spanish Fleets in the Mediterranean, on the 11th of February, 1743.

QUERIES stated by the said Admiral, and sent to Vice-Admiral Lestock, on the 20th of February, 1743.

First QUERY.

DID you not see the Signal out for the Line of Battle, when I made the Signal for bringing to, the 10th Instant at Night?

SECOND.

Was it not your Duty to have brought to in the Line of Battle, agreeable to the Signal then out?

THIRD.

Your Reason for bringing to with your Division at least five Miles to windward of me, the doing of which you must know would make you be (as the Wind was then) that Distance a-stern of me as you was when we made sail?

FOURTH

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FOURTH.

Did you not see the Signal made by me for engaging the Enemy? Your Reason for not repeating the said Signal, and endeavouring to cut off the four sternmost Ships of the Enemy; and for not making the Signal for any of your Division to perform that Service, especially as you had clean Ships in your Division; and also your Reason for shortning Sail and altering your Course by hauling upon a Wind?

Admiral Mathews's REPLY to Vice-Admiral Leftock's Answers to the aforementioned Queries, dated the 4th of March, 1743.

BY the *Namur's* Log-book the Wind was at E. N. E. when we brought to, the 10th of *February*; and from Ten that Night to Six the next Morning, from the N. E. by N. to N. E. Query, Whether you ought not to have kept the Line, notwithstanding the Alteration of the Wind, since it was in your Power to have done it? instead of being at Break of Day full five Miles in the Wind's Eye of me, consequently so many Miles astern when I made sail, which is notorious to the whole Fleet.

IT

It is true, that the thirteenth Article of the fighting Instructions does not mention that the Signal for engaging the Enemy shall be repeated by the other Flag-Officers; but I have Reason to believe, that every Captain in your Division, for want of your having repeated it, as Rear-Admiral *Rowley* did, judged he was to keep the Line, and not to make sail a-head of you in order to engage, which many of them could and would have done, had they not expected your repeating the Signal. *Query*, Why did you not set your studding Sails, and order the sailing Ships of your Division to make Sail, and engage the four sternmost Ships of the Enemy, particularly the *Elizabeth*, *Buckingham*, and *Revenge*? and why did you suffer any of your Division to shorten Sail? You say, that the *Cambridge* and *Dunkirk* could have made more Sail, and engaged the four sternmost Ships; and that you fired a Shot at the *Dunkirk*, and made her Commander's Signal, but all to no Purpose, for that he still kept to windward of you, as did the *Cambridge* likewise. *Query*, Why did you not make the Commander of the *Cambridge*'s Signal also? and why did you not send your

your Lieutenants to command those two Ships when you judged their Commanders did not do their Duty, and you must have seen that the Service suffered by their ill Behaviour? Surely it would have been right to have done so, and I should have thanked you heartily for it; for in the Situation I was, I could not possibly see what was doing a-stern of me.

You are pleased to say, that you fired a Broadside at the four sternmost Ships, and that the Enemy returned it: I take it for granted, that you judged yourself to be within Gun-shot of them, else you would not have fired, tho' it seems all your Shot fell short of them.

You are likewise pleased to give me for Answer to the last Part of my fourth and last Query; viz. that you left off pursuing the Enemy, and clapped upon a Wind, in order to protect the Rear-Admiral, &c. I must confess, that I am not a little surprized at the Reason you are pleased to give me for breaking the Line of Battle, and quitting the Enemy so near you, as those four Ships were by your own Confession. Had I judged Rear-Ad-

Admiral Rowley in so great Danger as you seem to insinuate him to have been in, there is a proper Signal to be made for that Service by the commanding Officer. I must take Leave to affirm, that had you not clapped upon a Wind with your whole Division, by the Accounts I have received, you and your Division (though not all your Sail abroad) might and must have engaged these sternmost Ships of the *Spaniards* in one Quarter of an Hour at least, by which Means the *Real* could not have escaped me, as I was within Musket-shot of her, when all the sternmost Ships of the Enemy came up and tore me to pieces ; and I must add, that your Neglect of that Piece of Service was obvious and plain, and it is certain that all the Captains in your Division judged they were to follow you, notwithstanding the Signal for engaging the Enemy was out ; I must take Leave to say, that if you had been pleased to have undeceived them on that Head, it would have been doing not only the Duty of an Officer, but likewise a friendly Part to me.

To conclude, I must take Leave to tell you, that I am greatly concerned to find you
judged

judged it was necessary for me to have dropped a Boat a-stern, to order not only those Ships of my Division a-stern of me, but likewise those of yours, which are in the Line of Battle ahead of you, to do their Duty. The Situation I was in at that Time did not permit me to see that such Orders were necessary ; but why did you not do it, who was at Leisure ? and tell me that such Orders were necessary, yet acted contradictory to your Judgment, by first shortning Sail, and soon after clapping upon a Wind. It therefore appears to me, that you was willing to assist me with your Judgment, in doing what was not in your Power to do ; viz. to go to the Assistance of Rear-Admiral *Rowley*, yet would not assist me when it was absolutely in your Power, viz. by ordering the Ships in the Rear of my Division to bear down upon the Enemy to prevent their getting up to the Assistance of the *Real*, and all of them attacking the *Namur*. This, Sir, is under your Hand ; but what is more extraordinary, you would not yourself do it, or order any of your Division to do, what you are pleased to tell me I ought to have done. This, Sir, is a true State of the Case,

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and

and I take Leave to affirm, that it was absolutely in your Power to have prevented the Enemy's Ships getting up to me, either by disabling them; or obliging them to put afore it; in either of the two Cases, the *Real* must have been burned by the Fireship (being when she blew up within Pistol-shot of her, and I am credibly informed must have sunk by the Shot she received from those Ships of the Enemy, had she not blown up) or have fallen into my Hands, as I was at that Instant of Time within Musket-shot of her.

Extract of Admiral Mathews's Letter to Mr. Corbett, dated November 17, 1744.

THE Charges against the late Vice-Admiral *Lestock*'s Conduct are contained in the Queries, and my Reply to his Answer to those Queries I sent their Lordships; to which I have now only to add, that he was guilty of a most scandalous Breach of Trust, by sending his own Captain (Captain *Stepney*) to Captain *Purvis*, at that Time under Confinement, in order to be tried at a Court-Martial on his own Accusation for Misbehaviour in time of Service, as appears in the
said

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said Vice-Admiral *Lestock's Reply*, &c. with Instructions to the said Captain *Purvis*, how to conduct himself at the Court Martial, and with Assurances that he would do him no Harm.

Copy, signed by

THOMAS CORBETT.

I WILL not take up the Time of the Court to detect and confute the false Discipline and Conclusions of this Gentleman, neither will I point out what he says I said, which I did never say. It is sufficient for my Purpose, that I have read his Charge to Judges of your Knowledge and Conception of Discipline: whose Penetration and Skill I entirely confide in, and make it unnecessary for me to enter into the Particulars in order to make the Inconsistencies and Absurdities appear more conspicuous.

I WILL beg leave to say, that not repeating the Signal to engage the Enemy, as Rear-Admiral *Rowley* did, (who in his Opinion could do nothing amiss) the *Real's* not falling

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into

into his Hands or being burnt by the Fireship, whose Loss is also imputed to me, are Facts strongly charged upon me here, with the additional Article of instructing Captain *Purvis*, for which I was suspended and disgraced; and what is very extraordinary, it appears by the Charge framed and prosecuted by the Gentleman in Behalf of the Crown, that none of these Facts stand against me, though other Facts are added, and enlarged upon, which are not contained in the Charge delivered by Admiral *Mathews*, which I shall point out at a more seasonable Time, and shall only now observe, it is like confining and suspending a Man for one Crime, and trying him for another; nay, it is beyond that Measure; for so far as I am a Judge of Law, Reason, and Equity, it is like preferring two Indictments against a Man, and bringing him to his Trial on the second, before he is found guilty or acquitted on the first; which Practice would be allowed in no Court of Judicature in this Nation, before a Trial on the first Indictment.

THIS is my Case with regard to these two Charges, but I submitted to the Dictates of
 Authority

Authority, without entering into the Justice of them, to shew how ready and eager I was to justify myself; and to prove, that the Delay to a National Satisfaction and public Justice, proceeded from no Part of my Conduct, however just and necessary.

IN order to vindicate those Measures which I took by a previous Examination in my own Defence, and of which I believe there is no Instance, but upon Occasion of the present Courts-Martial, where the Prosecutors for the Crown have made the Precedent, I shall take the Liberty to mention the Methods taken by those Gentlemen employed in carrying on the Prosecution against me.

THE 25th of *May*, 1745, Mr. *Corbett* wrote me, that their Lordships having appointed *John Sharpe*, Esq; to collect all the Evidence necessary for my Trial, and to prosecute me, they had directed him to correspond with me in all Things necessary to the speedy bringing on my Trial.

SEVEN Weeks had elapsed since he had given me this Information, and also acquainted me, that Admiral *Mathews* was ready to make good his Charge against me; during which Time, Mr. *Szarpe* and Mr. *Crepigny* found themselves under a Necessity of previously examining a great Number of Witnesses sent by Mr. *Mathews*, before they could frame this Charge against me; and without which it would have been impracticable (by their own Confession) from the Instructions he had given them to have prepared it.

THE Court will be pleased to observe, that notwithstanding I had been suspended then above eighteen Months, and sent home to bear all the Blame, the Indignation and Rage of an incensed Nation; notwithstanding I myself had given to Mr. *Szarpe* the Copy of Admiral *Mathews's* Charge against me, (as sign'd by the Secretary of the Admiralty, and sent by Command of their Lordships, as the Charge, to me, which I must prepare to answer) in order to find him in sufficient Matter to frame a Charge, as the first presented to me was not
any

any longer consider'd as such ; and there had been a strict Enquiry in the Honourable House of Commons, the Minutes of which, no doubt, those Gentlemen were provided with, to enable them to carry on the Prosecution ; yet with all these Materials, and the Instructions of Admiral *Mathews*, they found it impossible to prepare a Charge, without a previous Examination of Witnesses, which continued for seven Weeks together.

WHETHER such a tedious Application and constant Attendance in their Proceedings against me alone, arose from want of sufficient Matter, obscure Informations, and deficient Instructions, these Gentlemen are the best Judges, but they know full well that I now speak the Truth.

I AM not only the first Sea-Officer, nay the first Man of any Profession whatever, in this Land of Liberty, that ever had two Charges sent to him before his Trial, or that after receiving one Charge, Witnesses were examined on purpose to form another, that there might be no Loop-holes through which he might possibly

possibly escape ; but what is equally extraordinary, I saw many of my Witnesses, that had been summoned home by me from the *Mediterranean*, and not by Mr. *Mathews*, sent for to Town, and examined by Mr. *Sharpe* and Mr. *Crespigny*, before I had received a Copy of the Charge now exhibited against me.

I HAVE had the Opinion of Council, eminent in their Profession, that this Proceeding was neither agreeable to Equity nor Common Law, as it tended to prove a Snare to discover my Evidence, and disclose my Defence. And though I was sufficiently alarm'd with the Danger of this Proceeding, which might have deprived me of the Testimony of Evidence brought home on my Account ; and though the most innocent Man in my Circumstances could never approve or like a Proceeding of that kind, yet by my Silence I submitted, and put it out of the Power of Malice to say I was afraid of the Justice of my Cause.

I THOUGHT it incumbent on me to say thus much, because some Gentlemen that have been tried, have avowed to this Court, that I have

have been indulged in Liberties almost unheard of; though I know of none that they have not equally enjoyed, but I know of many Advantages that they and their Leader have possessed in an eminent Degree above me, while I have struggled and labour'd under insuperable Difficulties and Hardships.

AFTER the Prosecutors for the Crown had thus deliberately, with great Pains and Application, examined and search'd into every thing against me, by not only calling before them the Witnesses which Admiral *Mathews* had summoned against me, but those which were summon'd home by me in my own Defence; after they had departed from the usual Rules and Forms previous to the Trials of Persons accused, and to try an untrod-den Path, to create a Precedent in order to frame and support a Charge against me; must not I have acted under a Spirit of Infatuation, must not I have been thought an Idiot, or a Madman, to have suffered so useful a Precedent to drop, whereby I should have laid myself open to the guarded and cau-

tious Measures of the Gentlemen of *Doctors Commons*, employ'd in Behalf of the Crown?

I MUST confess I was not so rash and unprovident as to act in so open and unguarded a Manner, where all that was dear to me was concerned; and though my Circumstances were such as I was scarce able to bear the great and exorbitant Expence which I had already been subject to, yet the Prospect of greater Expences did not intimidate me; being determined rather to fall a Sacrifice to my Necessities, than to forbear taking any proper and necessary Step towards my Justification.

HENCE, so soon as a Copy of my Charge was sent to me, I employ'd Council: I had my Proctor and my Common Lawyers, because I had known all those to have been employ'd against me: I formed Answers to the Charge, in as full and extensive a Manner as I possibly could; I endeavoured to omit no Fact, which I apprehended any ways necessary towards explaining and supporting my Innocence, nor no Circumstance in Appearance, whether of Judgment, or in Concurrence of Evidence,

Evidence, which could communicate Light, and add Force to each Fact.

I NOT only intended, according to the Opinion of my Council, to prove that I no ways contributed to the Cause of the Miscarriage, but thought it necessary, by intermingling such Facts concerning others, as seem'd to be interwoven with my Case, and inseparable from my Defence, to prove where the true Cause of this Miscarriage lay, and every Step that was taken towards this fatal Disappointment. But here Mr. Judge-Advocate stop'd me short, and obliterated in many of the Depositions, if not in all of them that were sent to him, the Facts which led to that Proof. Whether this Gentleman, by his Office, is the Arbitrator of the Prosecution and Defence, to receive or refuse what is sent to him, according to his liking, I submit to the Judgment of this Court, which is well worth their Consideration.

FOR so far as I am a Judge of natural Justice, the Prisoner ought to be allowed to prove all those Facts and Circumstances he

may think proper for his Justification ; and it belongs to the Court, whether the Facts and Circumstances proved, can any Way tend to prove the Innocence of the Person accused, or to alleviate the Crime laid to his Charge : But surely no Judge-Advocate is to tell the Prisoner, that he will not examine the Witness as to such a Circumstance, because it no Way relates to the Matter in Hand ; for sometimes by examining a Witness as to a Fact seemingly very remote, another Fact or Circumstance comes to Light, by which the Innocence of the Person accused is made manifest. For this Reason, I must think it a most dangerous Method of proceeding, to lay any Restraint upon a Prisoner with Respect to the Points he is to be admitted to prove at his Trial ; and it must be much more so to confine him, where the Umpire or Judge-Advocate cannot be supposed to be able to judge of the Importance of those Facts and Circumstances.

BUT I beg pardon for this necessary Digression from the Point I was upon, which I cou'd not forbear mentioning here. To return : As
soon

soon as my Answers were drawn out, and deduced into Interrogatories as full and ample as I cou'd make them ; and after I had given in my several Informations, according to the repeated Directions of the Lords of the Admiralty, against all the Gentlemen ordered to be tryed, and not before, I applied to their Lordships for as great a Number of Witnesses, as I cou'd possibly name, or remember, to be sent for to Town, to be examined before a Solicitor that I had appointed for that Purpose ; being fully perswaded, that from the deliberate and preparatory Measures taken in Behalf of the Crown against me, that my Safety and Protection centered in the Examination of as great a Number of Witnesses, as I cou'd possibly retain.

THEIR Lordships, who had made Use of their Authority to bring the Witnesses before the Prosecutors for the Crown to be examined, in Order to frame and support the Charge against me ; and who in all their Proceedings, acted indifferently and impartially, and without Distinction of Persons, did not reject my Application, but directed the Witnesses
to

to attend me and my Solicitor, in Order to be examined by me, previous to my Trial.

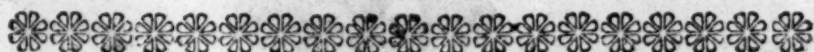
I WILL not take up the Time of the Court, by saying any Thing more in Defence of the previous Examinations taken by me; but if those who wish ill to my Cause, meant that these were the almost unheard-of Advantages I had been indulged with, they were handed down to be my Right by the Prosecutors for the Crown, who taught me this necessary and expensive Lesson.



Admiral



Vice Admiral *Lestock's*
D E F E N C E
TO THE
Court-Martial, &c.



THE

OF THE

OF THE

Vice Admiral Lefebvre

D E F E N C E

TO THE

Comte-Matthieu, &c.

OF THE



Vice Admiral *Lestock's*
DEFENCE, &c.



THE Commission I bore in his Majesty's Fleet on the 10th and 11th Days of *February*, placed me second in Command, but nevertheless wholly subordinate to the Orders of the Commander in chief: I shall therefore in the Course of my Defence to the Articles exhibited against me, endeavour to satisfy this Court, by the Evidence I have to lay before it, that on the aforesaid Days my Conduct was such as was consistent with the Commission I bore; that where Obedience was my Duty I was not defective in paying it to the Commands of my Superior to the utmost of my Power, and that where Command was with me I did not fail to exercise it in the best Manner I was able for the Service.

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AND

AND I shall also endeavour to prove, and I hope to the Satisfaction of this Court, that whatever were the Causes of the Miscarriage of the Fleet on the aforesaid 11th of *February*; however culpable others were in the Discharge or Execution of their respective Duties on that Day, that no part of the Miscarriage now complained of, ought with Justice to be placed to my Account; but that on the Contrary, all Circumstances of Time and Place considered, the unavoidable Effects of Necessity, and of natural Causes duly weighed and allowed of, and the Articles of War and the fighting Instructions, and the Practice of naval Discipline properly regarded and attended to, my Conduct will appear to have been justly regular; and that upon so important an Occasion I omitted nothing in my Power or Knowledge, that I could do, or influence to be done for the Benefit of the Service, and that I did every thing in my Power consistent with my Duty and Station in the Fleet to prevent the Miscarriage of it.

As the Charge against me, now before the Court, contains several Particulars of Omission and Neglect of Duty, I shall take Notice of them as they distinctly occur therein; at the same time giving this Court a short View of the Nature of my Evidence in Contradiction thereto; and when that Evidence shall have been read and confirmed

firm'd in Court by a farther Examination, and my Observations on the Evidence given in support of the Charge heard, and the Application I shall make of the whole duly considered, I hope this Court will have Reason to be of Opinion, that the Foundation of the Charge is groundless, and that I have not deserv'd the Censure it seems to carry along with it.

I SHALL now proceed to the Particulars of the Charge and my Defence against it. The first Article in the Charge exhibited against me is, that on the 10th of *February* the Fleet then under the Command of Admiral *Mathews* was in Sight and View of the combined Fleets of *France* and *Spain*, his Majesty's then declared Enemy, and the *French* King his Ally, and that thereupon the said Admiral *Mathews* did cause the Signal to be made for the Fleet to form a Line of Battle a-breast, which Signal was publickly made, and that I being then under his Command, and in full Sight of the Signal, and in Command of a Division of his Majesty's Fleet, and it being then fine moderate Weather, and Wind fair and sufficient to have formed the Ship in which I was, and those in the Division under my Command into a Line of Battle a-breast pursuant to the said Signal, did not obey the said Signal, but notwithstanding the same, kept and continued with my Ship and the Division under my Command, six, five, or at least four Miles to windward and a-stern of my Station, contrary

to the Discipline of the Navy, and in Breach and Violation of my Duty.

IN Answer to this first Article, it will appear by the Proofs I shall lay before you, that upon the 10th of *February* the Wind was North Westerly when the *British* Fleet weighed Anchor in *Hieres Bay*, and that I led out of the *Bay* on the starboard Tack ; that at one o'Clock the same Day, I and my Division were thereby nearer to the Enemy, who were in the South-West Quarter, than the Center and Rear-Admiral's Division were ; that about the same time the Admiral made a Signal for the Line of Battle a-head ; that the Wind was then Easterly ; that about two o'Clock the Admiral made a Signal for the Fleet to bring to upon the larboard Tack ; that such Signal was made for want of Wind to form the Line of Battle a-head, and by reason of the great Swell of the Sea, that the whole Fleet then lay to almost becalmed ; that I and my Division were then to leeward of the Center and of the Rear Admiral's Division, and by reason thereof nearest to the Enemy ; that the Admiral and his Division (the Center) were then obliged to pass by me, and my Division to form the Line of Battle on the larboard Tack ; that the Rear-Admiral and his Division were obliged to pass by me, and my Division, and also the Center Division to form the Line of Battle on the same Tack ; that the Time between the making the Signal for the Line of Battle a-head on the lar-

arboard Tack, and the Signal to bring to, was not above an Hour ; that within that Compass of Time the Fleet could not be formed in order ; that the Wind was then Easterly, and little of it, and a great Swell, so that several of the Ships were obliged to have their Boats towing ahead to prevent their running foul of each other, and could not keep their lower Deck Ports open ; that the Rear-Admiral and his Division were directed to lead by the Signal for the Line of Battle a-head, and that at that Time it was impossible for me and my Division to be otherwise situated than to leeward of the Center and Van of the Fleet, and nearest to the Enemy ; that whilst the Fleet lay to, at that Time the Admiral bore of me upwards of a Mile South-East ; that the Signal made by the Admiral that Day for the Line of Battle a-breast was made about three o'Clock in the Afternoon ; that I did repeat that Signal, and made Sail with my Division accordingly ; and that from the Time of mine, and my Division bearing away upon that Signal, to the Time of bringing to at Night, I continued a-breast of the Admiral, and rather to leeward than to windward of him ; that from the Time of making the Signal for the Line of Battle a-breast, to the Time of bringing to at Night, there was very little Wind and such a great Swell of the Sea, that during that Time a Ship could not go above six Miles with all her Sail set, much less

less cou'd the *Namur* gain of the *Neptune* that Distance, both Ships being under Sail; and that the Admiral did not gain any thing of me during that Time, as he then went down upon the Enemy under an easy Sail.

THE Court will be pleas'd to observe, that this Article of the Charge is not charg'd upon me by Admiral *Mathews*, who did not begin his Charge, which was sent to me signed by the Secretary of the Admiralty, till the bringing to on the 10th at Night.

THE second Article of the Charge against me is, that in the Evening of the 10th of *February*, the combined Fleets, being about one, two, or at most not three Leagues distant from his Majesty's Fleet, and were then in a regular well-form'd Line of Battle, and in full Sight and View of his Majesty's Fleet, and that I being so far to windward and a-stern of my Station as mentioned in the first Article, the Admiral (to prevent the Fleet being too much extended, and that I and my Division might come up and close the Line of Battle) caused the Signal to bring to, to be made, at which Time, and after, and for several Hours before, the Signal for the Line a-breast was abroad, notwithstanding which I did, on the said Signal to bring to, totally disregard and neglect the Signal for the Line of Battle, and immediately brought
to

to with my Division, fix, five, or at least four Miles to windward and a-stern of my Station in the Line of Battle, in Breach and Violation of my Duty, and to the great Danger of his Majesty's Fleet; and that I did not cause the Ships under my Command to be put in a Posture to fight, or formed in a Line of Battle, nor did make or repeat the Signal for their so doing, but that the Ships under my Command were brought to in Disorder, and at too great a Distance both from the Admiral and from the Line, contrary to the Discipline of the Navy and the Signals aforesaid.

IN answer to this second Article, it will appear likewise in Proof before you, that the Signal made by the Admiral to bring to on the 10th of *February*, was made between six and seven o'Clock in the Evening; that I was then a-breast with the Admiral, and but two Miles or little more distant from him at that Time; that the Signal to bring to was, eight Guns and four Lights placed in the fore Shrowds; that I repeated it; that after bringing to, the Admiral bore right a-head of me as near as falling off and coming to will allow; that the *Dunkirk*, *Cambridge*, and *Torbay* in my Division were stationed in the Line of Battle between my Ship the *Neptune*, and the sternmost Ship in the Admiral's Division on the Larboard Tack; that the *Dunkirk* might see to close with the sternmost Ship of the Admiral's Division, the
Cambridge

Cambridge with the *Dunkirk*, and the *Torbay* with the *Cambridge*; and that there is no other certain Method (as this Court very well knows) of forming a Line in the Dark or at Night, but by each Ship taking her Distance from another; that the *Torbay* brought to at a proper Distance between the *Cambridge* and the *Neptune*, and after her bringing to, the *Cambridge* was right a-head and the *Neptune* right a-stern of the *Torbay*; that my Ship brought to at a proper Distance between the *Torbay* and *Russel* (the one being a-head, the other a-stern of me;) that the *Russel* brought to at a proper Distance between me and the *Buckingham*, and after her bringing to I was right a-head, and the *Buckingham* right a-stern of the *Russel*, that the *Buckingham* brought to at a proper Distance between the *Russel* and the *Elizabeth*, and after her bringing to, the *Russel* was right a-head, and the *Elizabeth* right a-stern of the *Buckingham*; that the *Elizabeth* brought to at a proper Distance between the *Buckingham* and the *Revenge*, and after her bringing to, the *Buckingham* was right a-head and the *Revenge* right a-stern of the *Elizabeth*; that the *Revenge* brought to at proper Distance from the *Elizabeth*, and after her bringing to, the *Elizabeth* was right a-head of her, as near as falling off and coming to will allow; and none of the other Ships in my Division brought to in Disorder, or at too great a Distance from each other; that there was no Night-Signal made or appointed

ed by the Admiral for the Fleet to draw into a Line of Battle in the Night, nor was there any other Signal made by the Admiral that Night, than that to bring to; that at the Time I brought to, in Obedience to that Signal, I was not above three Miles distant from the combined Fleets, and that I was then so near them that two of their Ships bore away from me, at the Time I brought to, or soon afterwards; and that had I gone nearer to the Enemy than I did at the Time I brought to, I must have gone to Leeward of the Admiral and of the Center of our Fleet; that the Reason of the Admiral's making the Signal to bring to, was on account of the Nearness of our Fleet to the combined Fleet; that as to any other Signals being abroad or in force, than that of the Night-Signal to bring to, it was not possible at the Time of bringing to, to see a Day-Signal flying in the Admiral's Ship for the Line of Battle a-breast.

I admit the Enemy was in a regular Line according to the Words of the Charge, and if I prove by the concurrent Testimony of the Witnesses both for and against me, that the Van of our Fleet was about six Miles from the Enemy at bringing to, the Center about four or five, and my Division not above three or four Miles distance; I submit to the Court, whether by this Proof I do not entirely overthrow this Part of

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the Charge: For if I was four Miles or more to windward of my proper Station in the Line of Battle, and was not so great a Distance from the Enemy, at that Rate, my Station, according to this Charge, was to leeward of the Enemy.

IN the Course of the Examination, it will appear beyond Contradiction, that the combined Fleets were extended a great way to the Southward beyond our Van, and that neither Mr. *Mathews*, nor Mr. *Rowley* brought to, opposite to the Commanding Ships in the Enemy's Center and Van.

THE Signal for the Line of Battle, equally binds a Captain with an inferior Admiral; and admitting that the headmost Ship in my Division did not close properly with the sternmost Ship of the Admiral's Division, as there is no other Method of forming a Line in the Dark, but by each Ship taking her Distance from another by proper Signal-Lights; if the *Dunkirk*, the headmost Ship in my Division, was faulty in that Point, I submit to the Court, whether even in that Case I could be to blame, where I could not be supposed to judge of her Distance and Position in the Night.

THE Court will be pleased to observe, that if the Admiral did bring-to, to wait for me, and the Ships under my Command coming up and closing the
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the Line of Battle, and not from his Nearness to the Enemy; it must be admitted, that he had been rash and inconsiderate enough, without the least Regard to Discipline and his own Order (the Signal for the Line of Battle flying as mentioned in the Charge) to go down so far in Confusion, upon an Enemy formed in perfect Order of Battle, by leaving so great a Part of the Strength of the Fleet as my Division, with very little Wind, and a great Swell, four, five, or six Miles to windward and astern of him.

AND divided so great a Distance, (as by the Words of the Charge against me, which say, that the Signal for the Line a-breast was abroad, at the Time, and after, and for several Hours before bringing to) it is expected that I should have seen a Day-Signal for the Line of Battle in the Night, when the Admiral found it to be so dark, as to be obliged to make the Night-Signal for bringing to. This Presumption is the more preposterous and unreasonable, as my having seen the Signal for the Line flying would have answer'd no Purpose, but, on the contrary, been generally esteem'd as forgot to have been haul'd down.

As I saw the Admiral make the Night-Signal to bring to, it cannot be denied but that the Admiral saw and heard me repeat it after him, and consequently he must see the Distance I was from him,

by my Lights placed in the fore Shrouds, and the Guns fired when I brought to with my Division. Had I then brought to with my Division so far to windward and a-stern of the Admiral, would not he, in a Case where he could not help seeing me, as much as I saw him, where the Fate and Liberties of his Country depended on the well-being and conducting of her Fleet, have immediately sent to me, to correct and reform this Neglect and Misconduct in dividing myself and my Division from the Center; particularly as it was an Error of so dangerous a Consequence? As the Qualification of an Officer, to dispose of a Fleet under his Command in a proper Order of Battle, and Posture to Fight, is a strong Circumstance against this Part of the Charge, and a Recrimination on the Admiral's Conduct, brought by himself, or the Prosecutors for the Crown. But the Weakness and Inconsistency of this Charge are made more manifest and plain, by considering the Tenor of the Night Signal which the Admiral made for bringing to, which is the seventh Instruction in the Signals to be observed in sailing in the Night, *viz.*

SIGNALS by Night. ‡

VII.

‡ To
bring to
and lie by,
after sail-
ing large
or before
the Wind.

“ When the Fleet is sailing large, or before the
“ Wind, and the Admiral would have them
“ bring to, and lie by, with their Star-board
“ Tacks

“ Tacks aboard, he will put abroad four Lights in
 “ the fore Shrouds, and fire six Guns; but if with
 “ the larboard Tacks aboard, eight Guns; which is to
 “ be answered by the Flag Ships of the Fleet; and
 “ every private Ship is to answer with four Lights,
 “ (it being the same as to the Guns, that is, in
 “ the fourth Article for bringing to in a Fog)
 “ and the windwardmost Ships are to bring-to
 “ first.”

THIS Signal is a full Justification for my bring-
 ing-to and lying by, even supposing I had been
 really the Distance from the Admiral that is alledg-
 ed; because this Instruction absolutely requires the
 windwardmost Ships to bring-to first, and it cannot
 be said that the last Signal is not to be complied
 with, admitting it was in Contradiction to the
 Signal made before, or the Signal for the Line of
 Battle, when it was seen flying: Since as soon
 as the Admiral made the Night-Signal to bring-to,
 the Line of Battle a-breast was destroyed by that
 contradictory Order, and the Signal for that Line
 ceased to be an Order to all Intents and Purposes;
 and I could on no Pretence refuse my Obedience to an
 Order that I then did see, to comply with one that
 had been in force, and could not possibly be so the
 Moment the Night-Signal, which contradicted it,
 was made.

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WHEN the Signal was made for the Fleet to bring-to, it will appear that I and my Division were rather to leeward than to windward ; but had not that been the Case, it would have been my Duty to have brought-to immediately, without considering any former Order, or the combined Fleets being in a regular well-formed Line of Battle ; since it was impossible that both Orders could be complied with at one and the same Time, because two very different Situations were required by these two Orders ; consequently when a Fleet is sailing in a Line of Battle a-breast, according to a Signal abroad, or endeavouring to get into that Disposition, and the Signal is made to bring-to, the express Words of the Instructions commanding the windwardmost Ships to bring-to first, the Signal is to be obeyed as it is expressed, tho' contrary to the former Orders : For I submit to the Court, whether the Merit of an Officer does not consist in executing his Orders by Signal or otherwise, for which alone he is answerable, and not at all for the Rectitude of that Signal or Order.

THE Court will be pleased to observe, that it is mentioned in this Article of the Charge, that at the Time the Admiral made the Signal to bring-to (which was a Night-Signal) and after, and for several Hours before the Signal for the Line a-breast

breast was abroad, if this Day-Signal was binding after the Night-Signal to bring-to, and could have been seen after it was dark, hauling it down at any Time in the Night cancelled its Direction, consequently keeping it up several Hours after it was dark, unless it had been kept up all the Night, could direct but for the Time it was kept abroad. On the other Hand, if it was hauled down, because it had been generally obeyed or executed, where was the Guide or Order to keep in that Line after it was hauled down?

THE third Article of the Charge against me is, that by bringing to, as is alledged in the second Article with my Division, six, five, or at least four Miles to windward of my proper Station, and by not using the Means which were in my Power during the Night of the 10th of *February* to have got in my proper Station, I was at break of Day on the 11th of *February* a greater Distance from it. That in the Morning of the 11th of *February*, about break of Day, the Admiral caused the Signal for the Line of Battle a-breast to be repeated, and made Sail, notwithstanding which, I did not endeavour to come with my Division into my proper Station, whereby I and my Division were kept and continued separate and apart from his Division six, five, or at least four Miles, notwithstanding the Wind was fair, the Weather moderate, and I might have come with my Division into our Station, if I had

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endeavoured so to do, agreeable to the Signal aforesaid.

THE Court will be pleased to observe a great Absurdity and Contradiction in this Article, which in effect destroys it ; for if I encreased my Distance from my Station in the Night, and did not endeavour to get into my Station after the Admiral made Sail in the Morning, the Increase of Distance between our Divisions made during the Night, added to the further Increase by my not using my Endeavours after the Admiral made Sail in the Morning, must make the Distance six, five, or at least four Miles, with which I am charged in bringing to from my Station at Night, to be much greater ; and yet after the supposed Neglect of not using the Means in my Power in the Night, and not endeavouring to get in my Station after the Admiral made Sail in the Morning, I am not charged with being at a greater Distance, or being separated from Admiral *Mathews's* Division, farther than six, five, or at least four Miles, which is a Contradiction in itself.

FURTHER, it is mentioned in this Article, that the Admiral had caused the Signal for the Line a-breast to be repeated at break of Day, which is an Acknowledgement that the same had been hauled down ; consequently it may be very justly inferred, that if this Day-Signal had been binding in
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the Night, and the Admiral had seen or been able to observe the Difference in the Distance made by a gradual Drift between him and me, that he would not have been so long before he repeated this Signal, or otherwise given Orders to remedy effectually the casual Distance made between him and me.

IN Answer to this third Article of the Charge, it will also appear in Proof before you, that after my bringing to, and during the Time of lying by in the Night, and until Day-break in the Morning, no Orders were given by me, or by any other Person in my Ship, for any Alteration to be made in the Position of the Ship, and that no Alteration was made therein; that in the Night-time the Drift of the Ship being small and gradual, the same was not perceivable by the several Officers on the Watch; that the Wind shifted in the Night no less than a whole Quarter of the Compass: viz. from E. S. E. to N. N. E. that the Motion of the Ship in that Time caused a Difference in the Distance between the Admiral's Ship and mine, tho' the same was not perceivable till Morning; that such Difference of Distance was not only owing to the shifting of the Wind in the Night, but to the different Situation of the Admiral's Division and mine, his lying all that Time in the Offing more in the Western Current, where probably he had more Wind, and I and my Division being nearer

to the Shore and within the Eddy and Indraught between the adjacent Islands; that none of the Officers of the Watch on board my Ship perceived that I altered the Admiral in the Night, nor acquainted me with the Increase of Distance between the Admiral and me; that the Increase of Distance between me and the Admiral from the Time of bringing to at Night to the first Observation made of it in the Morning was near three Miles, and that the same was occasioned by the Means aforesaid; that the same was gradual, and not perceivable in the Night; that my Ship lay to, between the Time of bringing to at Night, and making Sail in the Morning, upwards of ten Hours; and that when I came upon Deck at break of Day, and perceived the Distance between me and the Admiral to have been increased in the Night, I immediately made Sail with my Division in order to regain what had been so lost in the Night, and for that Purpose ordered my Reefs to be let out, flung my Top-sail Yards, set my Topgallant-Sails and studding Sails, as soon as they could be set one after another, and made Sail about three Quarters of an Hour before the Admiral made Sail, and that I then used my utmost Endeavours to get near him.

THAT according to the Signal that was made to bring to, and after the Fleet had brought to, whether I was to windward or to leeward of the
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Admiral, it was my Station, I had no Authority to make Sail or to alarm the Fleet in the Night, so near to the Enemy; and farther, had my Sight been so nicely discerning as to have observed a gradual Drift of two or three Miles between the Admiral and me, in ten or eleven Hours in the Night, and had taken upon me to have made Sail, which was what I could not answer, as it was a Breach of the last Order received (the Night-Signal to bring to) yet I must have hoisted my Boats out, and searched out every particular Ship of my Division to have ordered them to make Sail, as well as acquainted the Admiral with this Proceeding, as there is no Signal in the printed Sailing or Fighting Instructions for a particular Division to make Sail after lying by, or for bringing to after making Sail, and the Admiral did not appoint any Signals for those Purposes. But had there been a Night-Signal appointed for the Line of Battle, and kept abroad, with a proper Signal appointed and made for the Fleet to bring to, not directing the windwardmost Ships to bring to first, and some other Night-Signal proper for this Occasion, it would have been a sure Guide to act by in the Dark, and a Direction for keeping in order of Battle, in Case of a Shift of Wind, Current or Indraught, which occasioned a Difference of two or three Miles between Night and Morning, in the Distance between the Admiral and me.

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BUT I submit it to this Court, whether, if the Ships station'd between me and the Admiral had observed the Difference of Distance in a gradual Drift of ten or eleven Hours between them and the Admiral, in Proportion as they were more or less in Shore, it was not their Duty to use the Means in their Power, each Ship taking it from their Leader, to remedy this Increase by shortning the Distance, and keeping in the Line of Battle; which infallible and only Method would have been in Course brought a-stern from the Admiral's Ship to the sternmost Ship of my Division; and whether an inferior Admiral is answerable for not rectifying what was impossible for him to see, and which if he had seen, he had neither Signals nor Authority to remedy,

THERE is such a palpable Neglect of common Experience in Seamanship, in this Part of the Charge, as may serve to shew with what Impetuosity Rage and Rashness will carry a Man away from his Reason, instead of shewing what was most injuriously intended by it: For what Line was I to have kept in the Night, after bringing to, other than I did keep? or what Means had I in my Power?

THE Day-Signal for a Line a-breast, was made in the Afternoon, when the Fleet was going down before the Wind upon the Enemy, who were to
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the Westward of us ; this Line I was in, and did keep.

AND when that Line was absolutely destroy'd, by the Fleet's bringing to upon the Larboard Tack, according to the Night-Signal made for that Purpose, and the Line a-breast thereby became a Line a-head, I was also in that Line with the Admiral: And if the Wind had not shifted, nor had there been any Current at all, or the same Current through the whole Space which both Fleets spread, and that all the Ships had continued to have lain by in one and the same Manner; all the Ships in both Fleets, which were in a Line with one another at the first bringing to, would have continued to be as much in a Line, though the Wind should have shifted so gradually quite round the Compass: And that there could not have been any considerable Difference in their Distance from one another between Night and Morning; and so consequently as the Wind shifted one whole Quarter of the Compass (against the Sun) *viz.* from E. S. E. to N. N. E. after bringing to. The Fleet continued to lie by on the Larboard Tack, and under the same Sail, their coming up to the latter Winds must necessarily change the Form of the Line again from a Line a-head, at being brought to, into another Line a-breast, but with their Heads now to the Eastward; and the sternmost Ships in the Line a-head at first bringing to, must as unavoidably be
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in the Wind's Eye of the Ships which were a-head of them in the Line a-head.

YET in this Article of the Charge, being to Windward, or in the Wind's Eye of the Admiral at Break of Day, is placed to the Account of my bringing to so much a-stern and to windward of the Admiral the Night before the Action: Whereas it is the strongest self-evident Proof (especially as there were Inlets in the Wind's Eye) that I was right a-stern of the Admiral at the Time of bringing to; that I could not, then, have been in any other Situation; and that if I had brought to with my Division, six, five, or four Miles to windward and a-stern of the Admiral, when he brought to at Night (according to this Part of the Charge) I must have been, for the same Reasons, right a-head of him at Break of Day, instead of being in the Wind's Eye.

AND surely it must be allowed, that as the Wind shifted so gradually, there was no Way so sure to keep in a Line in the Night (tho' not a Line of Battle, there being no particular Signals for that Purpose) as by continuing to lie still; and also, that, as our Fleet was so near the Enemy's, no Motion could properly, or with Safety, have been made in our Fleet in the Dark, even with Signals, without first knowing what Motion or Alteration

Alteration of Position, or that none at all had been made in the Enemy's Fleet.

AND as to my being at a greater Distance from the Admiral in the Morning, than I was when I brought to at Night, it might happen that my Division being nearer the Land, had the Wind more landerly; no uncommon Thing any where, especially under high Lands, and in such fair Weather: And my Division being also, thereby, nearer to the great Inlet into the Harbour of *Toulon*, and the Inlet between *Porquerole* and the Main, where, whoever has used that Navigation, must, or might have observed very strong Indraughts, and loud Riplings of Currents, which may, not improbably, be occasioned by the Eddies and Counter-current to that which generally runs to the South-westward, along the South Side of the Islands of *Hieres*, and all along that Coast, as the Eye of the Morning Wind was between the Bearings of those two Inlets: So that, if the Difference of the Distance between the Admiral's Ship and mine had been much greater than it was, it would have been no more to be wonder'd at in the Morning, than it could have been perceived in the Night.

THE Fourth Article of the Charge against me is, that I not making all the Sail I could, at the Time in the third Article mentioned, with the Division under my Command, to come into our proper Station,

Station, the Admiral caused a Signal to be made for me to make more Sail, the Signal for the Line of Battle continuing abroad, and the Enemy in View; and that he did also send by his Lieutenants, two Orders to me, to make all the Sail I could, and join the Line; notwithstanding which, I, without joining the Line, or causing or directing any of my Division so to do, in Breach of the Signal for the Line then abroad, and in Violation of the Admiral's Commands by his Lieutenants to me given, did, with the Ships in my Division, shorten Sail, and reef Top-sails, and did not, during all the said Day, nor until after the Engagement was over, join my Division with the Body of the Fleet.

IN Answer to this Fourth Article, it will likewise appear by the Evidence I shall lay before you, that the Distance between me and the Admiral, when I first made Sail in the Morning, was about five Miles; that the Admiral did not make Sail till about Seven in the Morning; that the Signal for the Line of Battle a-breast was made between Seven and Eight o' Clock the same Morning, and not sooner (tho' in the Charge it is said to have been then repeated): That about Nine o' Clock, the Admiral made a Signal for the Line, one still a-stern of the other with a large Wind, and for those Ships leading with the Larboard-Tack to lead large; and about half an Hour after, made a Signal for
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the Line of Battle a-head ; that when the Admiral first made Sail in the Morning, my Ship had her Topgallant-Sails, and all her other Sails abroad that could draw, except Studding-fails ; and that they were then either set, or were setting ; that the Admiral made the Signal for the Rear-Admiral to make more Sail, before he made the Signal for me to do the same ; and it is reasonable to judge, that he would call upon that Admiral first, who was most out of his Station ; that about Eight o' Clock in the Morning, I received a Message from the Admiral, by Lieutenant *Jasper*, acquainting me, that he would lie by for me until I could come up, which was a plain Acknowledgment that he saw I could not possibly come up with him, unless he should lie by for me, and yet that at the very same Time he made more Sail, and was going from me ; that at the Time I received that Message, I had all my Sails abroad that could draw, and that Mr. *Jasper* was so sensible of the Admiral's not lying by for me, and of his making Sail from me, that he declared he thought he should not be able to get a-head to the Admiral's Ship again ; that the Admiral, altho' he sent that Message, never did lie by for me, but instead thereof made Sail from me, even as soon as his Lieutenant (sent to me) had left his Ship ; that the Difference in sailing between the Admiral's Ship and mine was very perceivable, his Ship being a very good Sailer, mine an heavy and a foul Ship, and had not been clean'd

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for three Years and a half, and that the Admiral by Means thereof increased his Distance from me, from the Time Lieutenant *Jasper* left me ; hence it will appear, as the Admiral did not lye by, nor shorten Sail, according to the Message Mr. *Jasper* brought me, but made Sail in such a good-failing Ship as the *Namur* was well known to be, leaving me a greater Distance a-stern, that this Impatience and unfix'd Resolution in him occasioned what he lays to my Charge, while in his Course he near'd the Rear-Admiral in the *Barfleur*, which Ship was almost as foul as the *Neptune*, being near three Years and a half without docking, or careening ; that about half an Hour after Lieutenant *Jasper* so came on board me, I received another Message from the Admiral by Lieutenant *Knowler*, to make Sail and close the Line, notwithstanding I had then abroad my Topgallant-Sails, Studding-Sails, and all other Sails that cou'd draw, which Mr. *Knowler* then observed, and added, that he did not see how any more Sail cou'd be made Use of ; that Mr. *Knowler* then declared, the Admiral was uneasy that the Rear-Admiral did not make more Sail with his Division to get into the Line of Battle ; that in my Conversation with Mr. *Knowler*, I said the *Real* was my Ship, meaning, the Ship I was to engage with ; to which he answered, that the Admiral had said, that the *Real* was my Ship ; that in the Morning between eight and nine o' Clock, I
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made Signals for the Lieutenants of the *Nonfuch*, *Oxford*, and *Rumney*, of my Division, to come on board me, and when Lieutenant *Jones* came from the *Rumney*, and Lieutenant *Proctor* from the *Oxford*, I stationed their respective Ships to assist the sternmost Ships of my Division; and one of those Lieutenants observed, that as the *Real* went very fast a-head of me, I shou'd not be able to get up with her; hence, by what Lieutenant *Knowler* said to me, and my stationing the three fifty Gun-ships in my Division to assist the *Revenge* and *Elizabeth*, there being six Ships a-stern of the *Real* in the Enemy's Line, and I having according to the Order of Battle prescribed only four, it will appear to this Court, that the *Spanish* Ship, the *Real*, was designed both by the Admiral and myself, according to our Line of Battle, to be taken up by me; that when Lieutenant *Jones* came on board, it was about ten o' Clock, and no Topsails were lowered or hoisted on board the *Neptune* whilst he continued there, but on the contrary, Studding-Sails, Topgallant-Sails, and all other Sails that cou'd draw, or be of any Use, were then abroad; that the Admiral never lay by for me from the Time of his first making Sail, to the Time of his firing on the *Real*; that between the Time of my first making Sail in the Morning, to the Time of the Signal for leaving off chase in the Afternoon, I made and kept all my Sails set that cou'd draw; that my Topfail-Yards were never

unslung, nor did I reef during that Time; that the Reason the Line of Battle was not closed on the 11th of *February*, was, because the Admiral made Sail and left me, tho' I endeavour'd to have come up and closed the Line, and did every Thing in my Power to effect it.

THE Court will be pleas'd to consider, the Message deliver'd to me by the Admiral's Lieutenant, as not empowering me to break the Line of Battle, by shifting those Ships which sail'd best in my Division a-head of me, and those that sail'd bad a-stern of me; but as on the contrary the Message was to close the Line, and an Injunction to adhere to it, admitting the good sailing Ships in my Division did reef, after the Example of the Admiral, and the Van of the Fleet, and cou'd nevertheless keep in their Station in the Line, had I observed them reef, as I did not, it wou'd have been to little purpose to have directed them to do otherwise.

THE Court will also be pleas'd to take Notice, that this Part of the Article, with regard to reefing my Top-sails, is not in the Charge which Admiral *Mathews* deliver'd in against me, on which I was to have been tryed; and can any impartial Person believe that Mr. *Mathews*, who was so strict an Observer of my Conduct, wou'd have suffer'd so notorious a Breach of his Orders

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to escape him in his Charge against me, if it had been true.

THIS Tale was first trump'd up, in the Course of Captain *Paulet's* Examination, at the Bar of the House of Commons, strongly asserted, and much insisted upon by him, but how maintained here is the Question. I am not without Hopes, when all my Witnesses have been examined, that this Gentleman, the Author of this Part of the Charge against me, will have Reason to wish, for the Sake of his own Reputation, that he had not been so positive and sanguine in this Point against me.

I shall produce great Numbers of Witnesses, and if necessary, five hundred Persons that were in my Ship, where it was impossible to reef without their Knowledge; above twenty of which, were quarter'd in the Main and Fore-tops, and on the Main-top Gallant-yard, at the very Time it is said I reef'd. The Witnesses not belonging to my own Ship, are those who were nearest to her, not distant, nor their Sight obstructed, being in the Line of Battle. To what Purpose could I reef my Top-sails, having just before received the Admiral's Orders, by Lieutenant *Knowler*, to make Sail? It is not at all likely, that I shou'd act in open Defiance of my commanding Officer's Orders, as it could serve no other End, than giving
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him an Opportunity (who was ready enough on all Occasions) to destroy me. There was no Wind to occasion this Caution, for the Fleet went but very little a-head all that Time, with all the Appearance of fine Weather.

THE Signal being made for the Rear-Admiral to make more Sail, before it was made for me to do the same (a Captain of a Frigate being sent in his own Ship to the Rear-Admiral, with Orders for him to make more Sail, before the Time that the Order was sent to me, which was by a Lieutenant and not on purpose, for he carried Orders at the same Time to the *Dorsetshire*, *Essex*, *Rupert*, and *Royal Oak*) with what pass'd in Conversation between the Lieutenant and me concerning the Rear-Admiral, will clearly prove that the Admiral thought the Rear-Admiral a greater Distance from him than I was; and also these Facts will prove the great Hurry that the Admiral made down upon the Enemy in Confusion, without allowing a sufficient Time for the Fleet to form into a Line of Battle, the Center making too much Sail for the Van and Rear of the Fleet. And with great Justice it may be observed, that the Admiral was blind and partial to the Rear-Admiral's Faults, while he was a severe Scourge and Censurer of my Actions, tho' regular and consistent.

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As it will be given in Proof before you, that first in the Morning the Signal for the Line a-breast was made; then the Signal for the Line one Ship a-stern of the other with a large Wind, and for those leading with the Larboard-Tack, to lead large; and after that, the Signal for the Line a-head, the Impossibility of forming the Fleet in order of Battle according to these Signals will from thence appear. For I submit it to the Judgment of the Court, whether it was not beginning with the improper Signal, instead of going down gradually by those different Signals, and whether the Line a-head shou'd not have been the first, then the Line one a-stern of the other leading large, and to go down to Action the Line a-breast, instead of which we began quite the contrary. And I aver, and I shall die in this Opinion, that no Man that is an Officer, who knows his Duty, will make the Signal for Line a-breast to steer down upon an Enemy, until the Fleet has been stretched, and extended in a Line of Battle, according to the nineteenth Article of the fighting Instructions.

CAN it be Service to bear down so much unform'd and in Confusion, that the Van cannot possibly join Battle with, or engage the Van of the Enemy, the Center with the Center, and the
Rear

Rear with the Rear, and until you have neither Room nor Time to get into a proper Disposition? For, this Court well knows, that the nearer a Fleet in Disorder draws to another, the greater the Impossibility is of forming, and of getting into a proper Disposition before Battle, which a little Time made use of seasonably wou'd have easily accomplished.

THE fifth Article in the Charge against me is, that his Majesty's Fleet, and the combined Fleets being very near, and in likelihood of an Engagement, the Admiral caused the proper Signal to be made to engage, and did then and there, with several of the Ships under his Command, bear down upon, engage, and join Battle with his Majesty's Enemies, and endeavour to take, fire, kill, and endamage the Enemy: That I was in full Sight and View of the Engagement, and well knew the Duty required by that Signal; and that by the Articles of War, his Majesty's Fighting Instructions, and the Discipline of the Navy, it was my Duty to have done my utmost to take, fire, kill and endamage his Majesty's Enemies, yet that I did not do my utmost to bear down, fight, or engage with his Majesty's Enemies, as I might, and ought to have done; but instead thereof, withdrew, or kept back from the Fight, and kept and continued with my Division to
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windward of the Enemy, and out of Gun-shot, notwithstanding it was in my Power to have engaged with my Division in Fight, with the four sternmost Ships of the Enemy, had I steered a proper Course, and used the proper Endeavours for that Purpose: And that tho' it was my Duty so to have done, yet that I, and the Division under my Command, did at some Times haul up, and some Times bear away, and did not steer a proper or direct Course to engage in Fight, neither did I give Orders to any of my Division to come up with, and engage the four sternmost Ships of the Enemy; in breach of the Articles of War, his Majesty's fighting Instructions, and the aforesaid Command of the Admiral.

IN answer to the fifth part of the Charge, it will likewise appear in Proof before you, that the Admiral made the Signal to engage between ten and eleven o'Clock in the Forenoon of the 11th of *February*, near three Hours before the Engagement began; that at the Time of making this Signal, the Rear-Admiral and his Division were a considerable Distance from, and to windward of, the Center of the *British* Fleet; and that I at that Time was five or six Miles from and a-stern of the Admiral; that the Admiral had the Signal for the Line of Battle a-head abroad, At the Time he bore down on the *Real* (the *Spanish* Admiral's Ship) and kept it so during the whole Time he

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kept the Signal to engage abroad; that it was past one o'Clock when the Admiral and *Marlborough* began to fire at the *Real*; that when the Signal was made to engage, I bore down equally with the Admiral, and kept him on my larboard Bow, as I had done all the Morning of the said 11th of *February*; that I kept my studding Sails and Topgallant Sails abroad during the whole Time, and steer'd a proper Course, and used my utmost Endeavours to engage the Enemy, having never the whole Day observed the Admiral or the *Marlborough* on my starboard Bow; that I never kept back or withdrew from the Fight, nor did I steer with my Division, any part of that Day, to windward of the Line of the *British* Fleet, but kept the Admiral always open on my larboard Bow or right a-head, on which Bow, or rather right a-head, I also kept the *Marlborough*, which was the most direct and shortest Course for me to steer, (after the Admiral had left the Battle) in order to close the Line and engage the sternmost Ships of the Enemy: For had I steer'd more to leeward, than for the *Marlborough*, I should have not only separated my Division a great way to leeward of the Center of our Fleet, by not endeavouring to close the Opening between our Divisions, and have fallen more a-stern of the sternmost Ship of the Enemy, than I did; but my head Sails would thereby have been altogether useless and becalmed, and consequently the Ship have had less Way;

that

that the Admiral, at the beginning of the Engagement, was between *six and seven* Miles distant from me, and the nearest Ship of the Enemy was at that Time about six Miles distant from me, bearing then upon my Beam; and that the sternmost Ships of the Enemy bore to the North-West of the *Real*, the Enemy's Line being stretched South-East and North-West; that after the Fight began, I shifted my studding Sails from the larboard to the starboard Side, and went upon the Fore-castle of my Ship, the better to view the Situation of the Admiral, who when he left the *Marlborough* engaged, was broad off on my larboard Bow; that at the Time of my bearing down, and during the whole Engagement, there was very little Wind and a great Swell, which Swell encreased after the Engagement began, and Wind decreased, so that my Ship had not more than bare Steerage-way, and did not go during the Action one Mile an Hour; that about four o'Clock I try'd to reach and stop the sternmost Ship of the Enemy, and fired a Broadside at her for that Purpose, at which Time the *Marlborough* and *Real* were both on my larboard Bow; that the Ship I so fired at was then before my Beam, with her Top-gallant Sails lowered, Courses up, under her Topsails, and mizen Topsail a-back; that she returned my Fire, and immediately after set more Sail, by hoisting her Top-gallant Sails, filling her

mizen Top-sail, and letting fall her Fore-sail, and then bore away ; that as it was impossible for me to reach the sternmost Ship of the Enemy, it was much more so to reach the four sternmost, or any other of the Enemy's Ships, for I kept bearing down towards the Enemy, until I found I could do no more than fetch into the Wake of their sternmost Ship ; and that if I had continued bearing away more than I did, I should have fallen a-stern and to leeward of the sternmost Ship of the Enemy, and should thereby also have been a great Way to leeward of the Center of our Fleet and the *Marlborough*, which would have been contrary to the Signal for the Line of Battle abroad : That I continued, after firing at the sternmost Ship of the Enemy, to keep the *Marlborough* open on my larboard Bow ; that I never hauled up or bore away, nor was prevented by any such Means from getting up with the sternmost Ships of the Enemy ; and that I could not have done more than I did, to have come up with the sternmost Ships of the Enemy, consistent with the Discipline of the Navy, the Admiral's Commands expressed by his Signals abroad, and the fighting Instructions : That about four o'Clock the *Cambridge* and *Dunkirk* were to windward of me ; that the *Dunkirk* was most so ; that about that Time I fired a Shot to windward of them, and at the same Time made the Captain of the *Dunkirk's* Signal, she being a great Way to windward of
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the *Cambridge*; that soon after the Shot was fired the *Cambridge* bore away, and kept a-head of me, and that the *Dunkirk* then likewise bore down a little, but not into her Station, nor in a Line with the *Marlbrough*; that there was not Time between that and the Signal being made to give over Chace, for me to have sent a Boat on board the *Dunkirk*; that the *Dunkirk* at that Time of my so firing to windward of her, was near two Miles to windward distant from (and a-head of) me, and the *Cambridge* was then about three Quarters of a Mile from me, and the *Marlbrough* three Miles or more: That at the Time I so fired to windward of the *Dunkirk* and *Cambridge*, the Fireship bore down towards the *Real* without any Ship to cover her; that had the *Dorsetshire*, *Effex*, *Rupert*, and *Royal Oak* (of the Admiral's Division) or any or either of them bore down with the Fireship, they would not only have secured her Success, but would also, by so bearing down, have stopped the sternmost Ships of the Enemy from getting a-head, until my Division could have come up with them; that the Fireship was seen to blow up along-side of the *Real*, wide on my larboard Bow: That when the Action began, the *Revenge* was at least between two and three Miles from my Ship, and a-stern of her; that the *Russel*, which was esteemed a good Sailer, and had been cleaned but about eight Months

Months before, though she had all her Sails abroad that could draw, during the Action, yet could not come up with me till after the Signal was made to give over Chace: That the *Torbay*, before the Action began, dropt a-stern of me out of her Station, and that I hailed her to make all the Sail she could to get into her Station; that on her dropping a-stern of me, she had all her Sails abroad that could draw, even her Spritsail, which she afterwards set upon being hailed; yet nevertheless was not able to get into her Station again a-head of me, tho' she endeavoured all she could so to do, and for that Purpose kept all her Sails abroad: That the *Marlborough* went very little a-head after the Engagement began; that my Ship, between that Time and making the Signal to leave off Chace, gained upon her about four Miles; that the *Revenge* or *Elizabeth* could not have gained two Miles of my Ship, in four Miles sailing, had they had all their Sails abroad from the Time the Engagement began, and that if they could have gained any Thing they ought not to have shortned any Sail until they got near enough to me to be in their Stations.

I BEG Leave to observe, that the Admiral's making the Signal to engage the Enemy at so great a Distance from the Enemy, as he did three Hours before the Action, and before the Fleet was in a proper Disposition, contrary to the Practice of every

every Officer of Experience and Judgment, will farther serve to shew his Impatience in not giving Time for the Fleet to form; whereby it became impracticable for his Majesty's Fleet to keep the Wind of the Enemy, and have Room to form in good Order before the Action, unless the Admiral had hauled his Wind for that Purpose, which if he had done before he bore down and fired at the *Real*, it would have brought her, my destin'd Ship, upon my Beam.

THE Court will be pleased to consider the Tenor of that Signal; particularly that Part of it which says, *viz.* "And strictly take Care not to fire before the Signal be given by the Admiral." I submit it whether this Signal should have been made before the Fleet had been formed, or we had been almost within Point-blank. The three Signals for the different Lines of Battle being improperly made (the Admiral having begun with the Line a-breast, instead of the Line a-head) occasioned the Center of our Fleet about one o' Clock to be a-breast of the Enemy's Rear, the *Spanish* Squadron, our Van, near a-breast of their Center, while I and my Division were left a great way a-stern, with little Wind, a great Swell, and all the Probability of a Calm. The Rear-Admiral, instead of being far enough a-head to attack the Enemy's Van, was where the Admiral should have been; the Admiral, instead of being far enough a-head

to

to attack the Enemy's Center, was where I should have been; and I, instead of being far enough ahead to attack the Enemy's Rear, was left a great Distance a-stern. In this Disposition, each Admiral being equally alike a-stern of his Station, the Admiral bore up round with the *Marlborough* on the *Spanish* Admiral, and began the Engagement.

I SUBMIT to the Court, whether the Admiral did not by this Means cut me off from the Engagement, according to the Signal for the Line, which was kept abroad, as the *Spanish* Admiral had only six Ships a-stern of him, and in our Line of Battle there were eight Ships posted between the Admiral's Ship and mine; and I also submit to the Consideration of the Court (as the Shift of Wind, Eddy and Indraught of the Islands, made the Distance greater in the Morning than at Night between the Admiral and me, as has been explain'd) whether it was not therefore the more incumbent on the Admiral to have made the Signal for the Line a-head first in the Morning, which if he had done, the Rear-Admiral's Division and mine would have been soon formed in Order agreeable to the Signal, and afterwards been able to have gone down in a Line a-breast on the Enemy, and attacked Ship for Ship, from the Van to the Rear of both Fleets.

IN support of those Circumstances, which I apprehend lead to my Justification, I beg Leave to mention part of that which the Judge-Advocate obliterated in most of the Depositions, if not in all those I sent to him, which is, *viz.* That the Rear-Admiral and his Division, and I and my Division being so separated from the Center of the *British* Fleet, the same was in Disorder at the Time of the Admiral's bearing down towards the Enemy; and that the Enemy, upon the Admiral's making the Signal to engage, and their seeing such Disorder, crowded Sail and stretched to the Southward in order to get the Weather-Gage of the *British* Fleet; that the Admiral did bear down towards the Enemy so much, as to render it impracticable for the Fleet to form in order of Battle, and keep the Wind of the Enemy; that by the Admiral's so bearing down on the Rear of the Enemy, he cut me off from the Engagement, and brought the Enemy so much further a-head; that the *British* Fleet were at break of Day, and all the Morning of the 11th of *February*, to windward of the Enemy. And the 19th Article of the Fighting Instructions does expressly direct the Admiral, in Case he has the Wind of the Enemy, and they have stretched themselves in Line of Battle, to steer the Van of his Fleet, with the Van of the Enemy's Fleet, and there engage them; that the Enemy did stretch themselves in Line of Battle, on the 11th of *Febru-*

ary; but the Admiral, by so bearing down upon the Enemy, did not steer such a Course as that the Van of the *British* Fleet could then join Battle with or engage the Van of the Enemy's Fleet, as appears by his being under a Necessity of altering that Course twice afterwards before his bearing down to attack the *Real*, viz. when he made the Signal for the Line leading large, and again when he made the Signal for the Line a-head. And the Admiral, by thus bearing down on the Rear of the Enemy's Fleet, did prevent a general Engagement between the two Fleets; for that according to the Plan of the *British* Line of Battle, the Rear-Admiral ought to have been far enough a-head to have engaged the *French* Commodore, and not the *French* Admiral; and Admiral *Mathews* to have been far enough a-head to have attacked the *French* Admiral in the Enemy's Center, and not the Rear of the Enemy's Fleet. That had the Admiral, instead of bearing down before the Wind upon the Enemy in the Morning of the said 11th of *February*, endeavoured to have formed the Line of Battle a-head, each Admiral would by that Means have got into his proper Station and formed the Line; whereby the Enemy would have been prevented from endeavouring to gain the Wind of the *British* Fleet, and by the same Means the *Real* would have been brought far enough aft, for me to have taken her up according to my proper

per Station in the Line. This much of my Evidence the Judge-Advocate thought proper to reject.

I ENTIRELY submit to the Judgment of the Court, what was the most proper and direct Course for me and my Division to close the Line, engage the four sternmost Ships of the Enemy, and come to the Assistance of the *Marlborough*, which are three different Articles charged upon me, and whether steering directly for the Admiral's Ship (whether he had abroad the Signal for the Line a-head, a-breast, or a-stern of one another leading large) was not using the properest Endeavours in my Power, to execute what was required of me; and by doing the first Duty, on which all other indeed depended, I did not take the readiest Means to effect the two others.

As I shifted my Studding Sails to the starboard Side, that they might draw, which was what no other Ship did, they having kept the Wind on the Larboard-quarter, it is a certain Proof, that if there was any Fault in my Steerage, it was to leeward, and not to windward; for when the Fireship blew up, it will appear, I was to the westward of the *Marlborough*, which was the leewardmost Ship in the *British* Fleet, and then the Line was not altogether closed.

HAD I, from the Beginning of the Action, to the Time the Signal was made to leave off Chace, bore down more than I did, against the Rules of Prudence and Discipline, without Authority, and contrary to my Instructions, or regarding my own Safety, under a Gentleman who has proved so ready to condemn me; the Facts already mentioned, which are to appear in Proof before you, make it manifest, that my Conduct could have answered no other Purpose, than falling into greater Confusion, by separating to leeward from the Center, without the Possibility of coming near enough, even to the sternmost Ship of the Enemy, to do any real Service, had she or they kept before the Wind. Had I done this, then the Admiral might have been glad of such an Opportunity, and so fair a Subject, to have impeach'd my Conduct, and veil'd over his own; I should have err'd with my Eyes open; and then indeed with great Justice and Propriety the Admiral might have retorted on me, as he has done in his Replies, that had he judged it proper for me to have acted in that Manner, there was a proper Signal to be made for that Service by the commanding Officer; he would have said, Why did you break the Line? How came you to go to leeward after those Ships, and leave an Opening between our Divisions, which was your principal Duty to have closed, when it was so obvious you could not get up with them? How could you mistake your Duty, when the

Signal

Signal was flying for the Line of Battle, and I sent my Lieutenant to tell you to close the Line, and it was so obvious and plain that it was your Duty to close the Line? That every other Conduct, until that was effected, was Disobedience, as I did not make the 27th Signal in the Fighting Instructions, viz.

SIGNAL XXVII. *

“ If the Admiral would have any particular
 “ Flag Ship, and his Squadron or Division, to give
 “ Chace to the Enemy, he will make the same
 “ Signal that is appointed for that Flag Ship’s
 “ tacking with his Squadron or Division, and
 “ weathering the Enemy.”

* Any particular Flag Ship with his Division, to Chace.

BUT admitting, that by steering from the Time the Engagement began, a more leewardly Course, I had been able to put two or three of the sternmost Ships of the Enemy before the Wind; this Court very well knows that I cou’d not have been justified without a Signal; First, for breaking the Line; Secondly, for not endeavouring to close it, and engage according to the Order of Battle; Thirdly, for pursuing a small Number of the Enemy’s Ships, before the main Body was disabled or run; and lastly, for leaving my Station on any Pretence; which Instructions enforce Obedience, as the 1st, 13th, 21st, and 24th Articles of the fighting Instructions sufficiently bear me Testimony.

mony. It would have been impossible for me to have sustained so heavy a Charge against Discipline and Order; when it was so plain, that my Duty was to do my utmost to close with the Center, in Obedience to the Message sent to me, and the Signal for the Line which was kept a-broad.

IN Support of the Facts which I shall lay before you, with regard to my taking the proper and only Means in my Power, for the Ships in my Division to come up, and engage the four sternmost Ships of the Enemy; is it possible to think I shou'd take upon me to fire a Shot at the *Dunkirk*, in sight of so many thousand Men, if I myself had any Way contributed to the Ships of my Division not doing their Duty? And if I cou'd not before the Engagement begun, take upon me to shift and dispose of the clean Ships in my Division, which were the *Buckingham*, *Elizabeth*, and *Revenge*, and direct them to get a-head of me, in order to cut off the four sternmost Ships of the Enemy, (where there were Ships enough already posted by the Line of Battle, more than sufficient to cope with all the *Spanish* Squadron,) it was to no Purpose my ordering them after the Action began. For even had I been inconsiderate enough to undertake what I cou'd not answer, to direct these Ships going a-head of me, in breach of the Admiral's Order sent to me, and the Signal for the
Line

Line which was conspicuously flying, it was impracticable for them to obey and execute this Order, considering their Distance a-stern of me, the little Wind and the greatness of the Swell, which was so large that the lower deck Ports cou'd not be kept open. And in support of this Truth it will appear, that all the Forenoon, and till just before the Engagement began, the Ships in my Division went between three or four Knots every Hour; but from half an Hour past one to five, no less than three Hours and a half, the Wind having declined so much, and the Swell being so very high, that they did not in all that Time go above four Miles. What will serve to corroborate and enforce this Truth beyond the least Doubt and Contradiction, is the little Distance which was gained in the Afternoon's Sail upon the *Marlborough*, which Ship was all that Time in Action, lost her Masts, and could not be supposed to go any thing a-head. And as a further Proof, the *Ruffel*, always esteemed a good sailing Ship, not above eight Months from being cleaned, had every Sail set, but could not (till after the Fireship blew up) close with me. Where then was the Possibility of those three Ships stationed a-stern of the *Ruffel* in the Line of Battle, getting a-head of me, to execute what my commanding Officer expected of me contrary to the Signal abroad? There were five Ships of the Line of Battle a-stern of me all the Afternoon; as the *Torbay*, with all her Endeavours

deavours and Sail abroad, could not get into her Station again, a-head of the *Neptune* after she dropt a-stern, I beg the Court will be pleased to observe, as the strongest Proof that can be given in this Point, that as one Ship with another of these five, were at least half a Mile from each other when the Engagement begun, the sternmost Ship, the *Revenge*, must have been two Miles and a half a-stern of me, the *Elizabeth* two Miles, and the *Buckingham* one and a half; hence how was it possible for the *Buckingham* to gain of me, in four Miles sailing, a Mile and a half, the *Elizabeth* two Miles, and the *Revenge* two and an half? tho' these Distances gained of me, would have only made them a-breast of me, who could not reach the sternmost Ship of the *Spanish* Squadron. If these Ships cou'd not get so far a-head as where I was, (and it will appear that I was almost as great a Distance from the nearest Ship of the Enemy, as from the Admiral when the Engagement began, and that the *Russel*, *Torbay*, and my Ship, with all their Sail abroad, did not go during the Engagement above four Miles;) I submit it to the Court, whether I did not do my utmost, or left any thing undone for his Majesty's Service which I cou'd possibly do: And what it wou'd have availed, even if I had taken upon me in sight of my commanding Officer, to have shifted and disposed of the Ships in my Division, otherwise

otherwise than as he had prescribed by the Line of Battle.

THE sixth Article in the Charge against me is, that during the Engagement aforesaid, between part of his Majesty's Fleet and the said combin'd Fleets, his Majesty's Ships the *Namur* and *Marlborough* were hard pressed; that the latter was disabled, and when disabled, engaged in Fight, which I saw, and being in Command as aforesaid, and capable of yielding Assistance or Relief to the said Ships *Namur* and *Marlborough*, by going with my Ship, or ordering any of the Ships under my Command to their Assistance, which I or they might have done, and which several of the Ships in the Division under my Command could, and would have performed, had they been ordered; notwithstanding which, I did not do my utmost to assist and relieve the said two Ships, but withdrew and kept myself back, and the Ships of my Division, from the Fight or Engagement, contrary to my Duty and the Articles of War.

IN answer to the sixth Part of the Charge, it will appear in proof before you, that the Admiral did not continue engaged but a few Minutes before he hauled his Wind and left the *Marlborough*, and continued out of the Battle from the Time he so left the *Marlborough* to the Time he wore in the Evening to form the Line on the star-board Tack, and stood from the Enemy; that

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the Action on the Ships of our Fleet passing the sternmost Ships of the Enemy, lasted only a few Minutes; that by the Admiral's wearing to form the Line of Battle on the starboard Tack, my Division, which before was the Rear of the *British* Fleet, became the Van; that the Admiral made the Signal to give over Chace soon after the Fire-ship, blew up or about five o'Clock, and then hauled down the Signal to engage; that I repeated and obeyed the Signal to give over Chace; that it was not in my Power to get up to the Admiral's Assistance before he hauled off from the *Real*, neither was it in my Power to have gone to the Assistance or Relief of the *Marlborough* before the Signal was made for leaving off Chace; that it was not possible for any of the Ships in my Division to have passed between the *Dorsetshire*, *Essex*, *Rupert*, and *Royal Oak*, and the sternmost Ships of the Enemy, between the Time of the Admiral's engaging and his making the Signal to give over Chace; but in case the same could have been done by any particular Ships in my Division, and had so been, the same must have been deemed breaking of the Line of Battle. That if I had not repeated and obeyed the Signal to give over Chace, my Division could not have got up to the *Marlborough's* Assistance before the Admiral on the starboard Tack had passed the *Marlborough*; that just before the Fireship blew up, the *Marlborough* ceased firing, the *Real* and her Second a-stern having bore away from the Fireship: That the *French* had tacked on the Van of our Fleet about the

Time

Time the Signal was made to give over Chace ; that upon my observing the same, the Signal for giving over Chace being abroad, I then, and not before, shortned Sail and hauled upon a Wind ; that the Admiral soon after he made the Signal to give over Chace, made the Signal for the Line of Battle a-head, and that I repeated it, and that immediately afterwards the Admiral wore round, and stood on the starboard Tack to the Northward, leaving the *Spanish* Ship *Poder*, which in the Time of the Action was taken by the *Berwick*, to be retaken by the *Enemy*, the *British* Ships standing from her on the starboard Tack with the Admiral ; that the *Namur*, *Dorsetshire*, *Essex*, *Rupert*, and *Royal Oak*, by wearing in little Wind and a great Swell, did near the four sternmost Ships of the *Enemy*, then drawing near their Admiral ; that such of our Ships as did fire after the Signal to give over Chace was out, fired their larboard Guns as they passed by the sternmost Ships of the *Enemy*; that the four sternmost Ships of the *Enemy* did not get up to fire any Guns at the *Namur* or *Marlborough* before the Signal to give over Chace was out, and that when they did get up they only fired in passing our Ships on the contrary Tack.

I MUST beg Leave to observe, that the Admiral himself took Care not to need any Assistance, as he hauled off from the *Enemy* in a few Minutes after the Action began, and continued out of the Battle until he wore and stood to the Northward

as the *French* Squadron were drawing near to him; when in the Close of the Evening, he fired for a few Minutes in passing the sternmost Ships of the Enemy.

If the Court is not already satisfied of this Truth, upon farther Enquiry it will be proved, that the Admiral's Conduct in steering down towards the Enemy occasioned all the Ships, from the *Princess Caroline* in the Line of Battle to the *Dunkirk* and *Cambridge* in my Division, to fire at the *Spaniards*; these Ships were the *Guernsey*, *Salisbury*, *Kingston*, *Berwick*, *Bedford*, *Dragon*, *Somerset*, *Princessa*, *Norfolk*, *Namur*, *Marlborough*, *Dorsetshire*, *Essex*, *Rupert*, and *Royal Oak*. The headmost Ship of the Enemy, that was fired at by these Ships for any Time, was the *Poder*, the eighth Ship from the sternmost in the Enemy's Rear; consequently as the four sternmost Ships of the Enemy did not get a-head till after the *Fireship* blew up, and the Signal was made to give over Chace, there could be only five Ships of the Enemy to encounter with the above-mentioned fifteen of our Ships, from half an Hour past one to near five o'Clock, about three Hours and an half; out of which five Ships it will be allowed, that the *Real's* Second a-head did not stand it long, and that the *Poder* being dismasted struck. Neither can it be denied that the Situation of these fifteen Ships against so few was such, that from the Beginning to the End of the Action they might have been ordered and directed to attack

tack the *Spanish* Squadron in what Manner the Admiral thought proper, or shifted and disposed of according to the Condition of the Enemy, the Occurrences that happened, proceeding from the different Circumstances and Disposition of both Fleets, more particularly when the *Marlborough* was so hard pressed, which was entirely owing to the Want of that Assistance which was so near at Hand in the Admiral's Division, and not in any Manner to my Conduct. It cannot be pretended that Fire and Smoak obstructed the Admiral's Sight, or that he did not leave the *Marlborough*, but continued in Battle: On the Contrary, I must take the Liberty to say, if it has not already in the former Trials been fully proved, it will in the Course of my Evidence appear, that his Stern lay towards the *Marlborough* and the *Real*: He broke the Line of Battle, by bearing down in the Manner he did, which he had no sooner done, than he withdrew from the Station he had allotted himself and the *Marlborough*, just before he bore down. In the Situation he was in, it was impossible for him not to see how the Ships a-head and a-stern of him were employed; he had done with Fighting, his Person was not wounded, nor his Ship disabled; and what could there be to hinder him from distinguishing what was doing from the Van to the Rear of the Fleet? And it is so well known, and has been more than once already proved to this Court, that he sent Boats on board of the *Dorsetshire* and *Essex*, and the Fireship, that it is almost
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unnecessary to enter into that Proof: Therefore as these Ships kept to windward with the *Rupert* and *Royal Oak*, as it cannot be denied that they were not far enough a-head from the Beginning of the Action to attack the *Spanish* Admiral, or any of the Ships a-stern of him; he had it absolutely in his Power to correct and reform any Abuses from their trifling and throwing away their Shot, or to have ordered them to a close Engagement with the Enemy.

WHAT is more, if the Court think it necessary, I shall prove that the *Berwick* (the next Ship to the *Princess Caroline* in the Line of Battle) engaged the *Poder*; that all the Ships between her and the *Norfolk*, no less than eight viz. the *Somerset*, *Princessa*, *Dragon*, *Bedford*, *Kingston*, *Salisbury*, and *Guernsey*, with the *Berwick*, were employed in firing at the *Poder*, that the *Norfolk* beat the *Constant* away out of the Enemy's Line, and the *Marlborough* was soon left in Distress against the *Real* and her Second a-stern by the *Namur*, which Ship continued out of the Action, and beheld the *Marlborough's* Distress, without yielding or sending her the proper Assistance which was so near at Hand; that had the *Dorsetshire*, *Essex*, *Rupert*, and *Royal Oak* bore equally down with the *Marlborough* at the Beginning of the Action, the *Real* must have fallen into her Hands, as the *Spanish* Admiral's Second a-stern, which was the Ship that pressed hard on the *Marlborough*, and cleared her Decks, would have been then overpowered; and consequently the
stern-

sternmost Ships that are laid to my Charge, tho' they never got near enough to fire at the *Marlborough*, by this Means would have been stop'd from getting a-head for me to have taken them up.

I HOPE the Court will excuse my mentioning Facts which do not seem to concern my Conduct, in Defence of this Article of the Charge; but I have been told, that the Proof would be the stronger, provided I could not only shew that I could not possibly give any Assistance to the *Marlborough* myself, but shew what Ships could, and that they neglected that important Service; which is the Reason I have been induced to trespass thus much on the Time of the Court.

AND I must beseech the Court to observe, that when the Fire-ship was blown up, and our Van was running to join the Centre, on the contrary Tack to the Line of Battle, from the *French*, who were close after them, that the Admiral then made the Signal to give over Chace, which was the white Flag at the Fore-top-mast-head, hoisted instead of the Signal to engage. This was a general Signal for the whole Fleet to give over Chace, not a particular one, for it was not so much as spread under the red Flag, but hoisted in its stead; and if the Admiral had not intended it as such, he would have made use of the proper Signals, as express'd in the Instructions for calling in Cruizers, chasing in the different Quarters of the Compass, and not have haul'd down the red Flag. And the Signal for
the

the Line of Battle thus circumstanced, what was there left for me to do (who could not, with all my Endeavours, reach the sternmost Ship of the Enemy) but to obey, and repeat the Signal to give over Chace? And if I had not acted according to the Admiral's Meaning, as well as that of the Signal, he would, upon seeing me repeat the Signal, have corrected the Mistake, and given me Authority to have acted otherwise.

WHEN I saw the Rear-Admiral with the Signal out for the Ships in his Division to bear down in his Wake, and the *French* Squadron so close to our Van, that I could only distinguish them from one another by the Brownness of the *French* Sails, I could not help expressing my Concern publicly, lest the Van should be destroy'd by so great a Superiority; for in all my Service I have never seen or heard of the like.

IF it has not already appeared to the full Satisfaction of the Court, that the Admiral wore and stood on the starboard Tack, on purpose to get away from the *French*, by which he was forced into the Fire of the sternmost Ships in his Flight, it will on the Examination of my Witnesses, and be strengthen'd with the *Berwick's* leaving the *Poder*, with two of her Lieutenants and twenty three Men on board of that Ship, and cutting away her Barge to make the more Expedition to get up with the Admiral, who was then four Miles from her, standing to the Northward of the Enemy; and

and what will be forever a Disgrace to the Ships near the *Marlborough*, and those that afterwards passed her, that Ship that was dismasted, and bore all the Brunt of the Action, hailed every Ship near her, begging their Assistance; but such was the Conduct of the Admiral, and the Captains of the Ships hailed, that nevertheless she was left in Distress all Night to the Mercy of the Enemy.

BUT after all, if I could have possibly given any Assistance to the *Marlborough*, I submit to the Judgment of this Court, how agreeable it would have been to Discipline and the Line of Battle, to have passed with my Division between the Enemy and the Center of our Fleet. But as no Man can construe another's Meaning, but by the Expression, nor were we all Commanders in Chief, but subject to obey, why did not the Admiral, if he was sensible of any Defect of Judgment in himself, haul down the Signal for the Line, and fire two Guns out of his fore Chase (agreeable to the twenty-sixth Article of the Fighting Instructions) and then he would have given a Latitude and Scope for me and others to act, as we apprehended the Services lay open for Execution?

As the seventh Article in the Charge against me, contains no more than a Summary or short Recapitulation of what is contained in the six preceding Articles, with the Consequences supposed to result therefrom, in order to affect me, I shall not trouble the Court with the Enumeration of

my Evidence in Answer thereto; that which I have already mentioned for my Defence being, as I conceive, a full Answer to this seventh Article.

As to the eighth Article of the Charge, it contains nothing more against me than a general Charge of Offences, without giving any one particularly instanced; I shall therefore only give a general Answer thereto; that is, that I was not guilty of any Breaches of my Duty at all, as Vice-Admiral and Commander of the White Squadron of His Majesty's Fleet, on the aforesaid tenth and eleventh Days of *February*, either before, or during the Engagement; and it will appear in Proof before you, that I was not a principal Cause, nor did in any Manner whatsoever contribute to the Miscarriage of His Majesty's Fleet, but, on the contrary, that I used my utmost Endeavours, and had at Heart to get up, and to engage with, and destroy the combined Fleet; that I did every thing that my Knowledge or Experience could dictate to me, to be done for that Purpose; and that I did not make use of any indirect Means, or Practices whatsoever, either to avoid the Engagement, or giving His Majesty's Ships any Relief, or Assistance, it was in my Power to give, or direct.

THAT the Witnesses I shall produce in my Defence, never heard, or were acquainted with any Rumour or Imputation laid upon me, touching my Conduct on the said tenth and eleventh Days
of

of *February*, till after my Flag was struck in *Ma-ban* Harbour: That my Flag continued flying five Weeks, and upwards, after the Engagement; and that they believed the Admiral would not have so continued me in Authority, had he thought me culpable; and next Morning after my Flag was haul'd down, in Consequence of his Letter of Suspension, so little did it appear that I had misbehaved, that many Boats came on board to enquire whether I had not died suddenly.

AND if the Court will permit me, or think it necessary to make the Proof more clear and strong in my Defence, I will not only prove, that I did not in any Manner whatsoever contribute to the Miscarriage of his Majesty's Fleet, but that the Conduct of the Gentleman, whose Trial comes after mine, was the principal Cause of the Miscarriage; and that those Captains who have already deservedly suffered by the Judgment of this Court, were in some Measure led into their Misbehaviour, by the Commander in Chief, the Leader of this fatal Miscarriage: To whom may be truly said the Nation owes every ill-concerted Motion, every confused Step and unwary Disposition, that was taken in the conducting of that Fleet, whether previous to the Engagement in it, or in the Escape of the common Enemy afterwards.

THUS I have gone through all the Articles of the Charge exhibited against me by the Prosecutors

tors for the Crown; what I have said, which I shall support by a great Number of Witnesses, is agreeable to what I have said in other Places. Truth is my Refuge, it is great, and must prevail; my Story has never varied, tho' many Times told over, and the Facts and Circumstances which strengthen and enforce it, will be found to have been the same from the Beginning without any Variation, even in the most minute Particular, either in Time or Place. And that my Judges may be perfectly satisfied in this Point, and be better able to judge whether my Witnesses in their Examinations confirm and support all the Proofs I have mentioned, I have provided a Copy of what I have now delivered for every Member, if they will be pleased to receive them, as letting in all the Light that may be proper to give them a full Knowledge of the Matter now under their Consideration: For I am well assured that this Court will distinguish, and lay no more Weight upon any thing, whether for or against me, than it deserves.

I now proceed to call my Witnesses.

F I N I S.



POSTSCRIPT.

TO prove, that at the time of my bringing-to at Night, the 10th of *February*, I was in the Line of Battle with the Admiral, right a-stern of him; and therefore to leeward of him, instead of being according to the Charge, six, five, or four Miles to windward of him; and that I could not then have been in any other Situation, as mentioned in the 22d Page; it may be sufficient to observe,

THAT as Ships of similar bodies in lying-by, under the same Sail, with the same Position of the Helm, and where there is no Current, will neither alter their Bearings by the Compass, nor their Distance one from another in driving; the difference observed to have been made, both in the Bearing and Distance of the *Neptune* from the *Namur*, between the Time of my bringing-to at Night, and Day-light the next Morning; must therefore have been occasioned by a Difference in some one or more of the above mentioned Particulars, as the annexed Figure may more fully demonstrate.

K

WHERE

WHERE the Admiral lying-to in the *Namur* at *A*, with the Winds, which according to his Letter to me of the 4th of *March*, were with him from E. N. E. to N. E. by N. would have been driven in two Courses *Aa*, *aC*, from *A* to *C*.

AND the *Neptune* at *B*, where I brought to in my proper Station, in the Line of Battle with the Admiral, who then bore South about two Miles off, would have been driven, with the same Winds, Sail, and Helm, in the same Space of Time in two Courses *Bi*, *iD*, from *B* to *D*; where at *D*, the *Namur* at *C* would have continued to bear South two Miles off: but now in a Line a-breast of one another, instead of the Line a-head, which they were in at first bringing-to; as appears by the Point of the Character (δ) with which the Place of each Ship is noted, and I must have been upon the Admiral's Beam to windward of him; which, in lying-by, is generally call'd being in the Wind's Eye.

OR, if the Admiral at *A*, had had the same Winds, which drove me in four Courses, *Bb*, *bc*, *cd*, and *dE*, from *B* to *E*, they would in the same Space of Time, with the same Sail and Helm, have driven the Admiral by the same Courses, *Af*, *ef*, *fg*, and *gF*, from *A* to *F*, where we should now also have been in a Line a-breast; and his Bearing by Compass and his Distance,

tance, would still have been the same from me at *E*, as they were at my bringing-to, viz. South two Miles; and all the Ships betwixt the Admiral and me, and those of my Division, which were astern of me at our first bringing-to, would also have continued to have been at the same Bearing by the Compass, and at the same Distance one from another, as they were at bringing-to.

BUT, if the Winds which the *Namur* had, did really differ from those that I had in the *Neptune*, which shifted with me from E. S. E. to N. N. E. a whole Quarter of the Compass; this Difference of Winds, which I could not possibly know any thing of, in the Night, nor till I received the above mentioned Letter, must unavoidably have occasioned a Difference both in the Bearing by Compass and in the Distance, betwixt the Admiral and me: So that, when I was driven by them, on the above mentioned four Courses from *B* to *E*; the *Namur* at *C*, would have borne at Day-light from me at *E*, S. S. E. and the Distance between us have been increased, to three Miles and three Quarters; without any Difference of Sail, Helm, or Current: By which I should have been still more to the Westward, and consequently nearer to the Enemy, than the Admiral would then have been.

BUT as the Admiral bore to the Westward of the South from me at Day-light; and the Distance seem'd to be more than four Miles, another part of

the Cause of those Differences, must have been the Currents; which are observed to run in that very Place towards the great Inlet to the Harbour of *Toulon*, and towards that other Inlet the *Petite Passe* at the West End of *Porquerole*, so strong, that the Eddies and Riplings of them often make a loud Noise; the mean Bearing of the former Inlet between Night and Morning being N. N. E. and of the latter about E. N. E. as represented by the Darts *T* and *P*, the *Neptune*, and rest of my Division being in the Power of the Confluence of these Streams, and driven thereby, at the Rate of but one third of a Mile in an Hour; or allowing such a Current to have had that Effect upon the *Neptune*, more than it had upon the *Namur*, as it cannot be doubted, but that a Ship will drive faster in lying-by, for the same Reason that she will sail faster than another, that is much fouler; the *Namur* being clean'd near two Years and a half after the *Neptune*.

THIS small and reasonable Allowance, would have driven the *Neptune* to *I*, and have increased the Distance betwixt me at *I*, and the Admiral at *F*, to somewhat more than five Miles, and have brought the *Neptune* to bear N. N. E. $\frac{1}{2}$ E. from the *Namur*, which is within half a Point of the Wind's Eye, as I had it in the Morning; and would have increased the Distance betwixt me at *I*, and the Admiral at *C*, to somewhat more than six Miles,

Miles, and have brought the *Neptune* to bear N. by E. from the *Namur*, which was the very middle Line of the Wind's Eye in the Morning as *MI*, between the Wind at N. N. E. as I had it *K I*; and at North, as the *Nonfuch*, another of my Division had it then, as *L I*.

WHEREAS had I brought-to at Night (according to this Part of the Charge) at four Miles, or any other greater or less Distance, a-stern and to windward of the Admiral, at the Time of his making the Signal to bring-to, as at *G*, with the same Winds, which drove the Admiral from *A* to *C*, I should, without any Current, have been driven on the same two Courses *G h*, *h H*, parallel to *A a*, *a C*, from *G* to *H*, and have been at *H*, exactly at the same Distance from the Admiral at *C*, as I had been when I had so brought-to; and must have been right a-head of him at break of day, instead of being, as I was, in the Wind's Eye of him; and from *G*, with the same Winds, as I had where I did bring-to, I must have been driven on four Courses *G k*, *k l*, *l m*, and *m N*, parallel to *B b*, *b c*, *c d*, and *d E*, from *G* to *N*; where at *N*, I must have been right a-head of the Admiral at *F*; instead of being in the Wind's Eye of him, and at exactly the same Distance from him at *F*, as I should have been, if I had brought-to, according to the Charge at *G*.

FROM

FROM what has been said, I presume it appears, that my being in the Wind's Eye of the Admiral in the Morning was not according to the Admiral's Inference, in consequence of my bringing-to at Night so much a-stern, and to windward of him ; but on the contrary, from my having been in the Line of Battle with him at bringing-to, which, (and that I could not then have been in any other Situation,) is thereby proved to a Demonstration, excepting the Effect of unknown Currents, which is Matter of Observation.

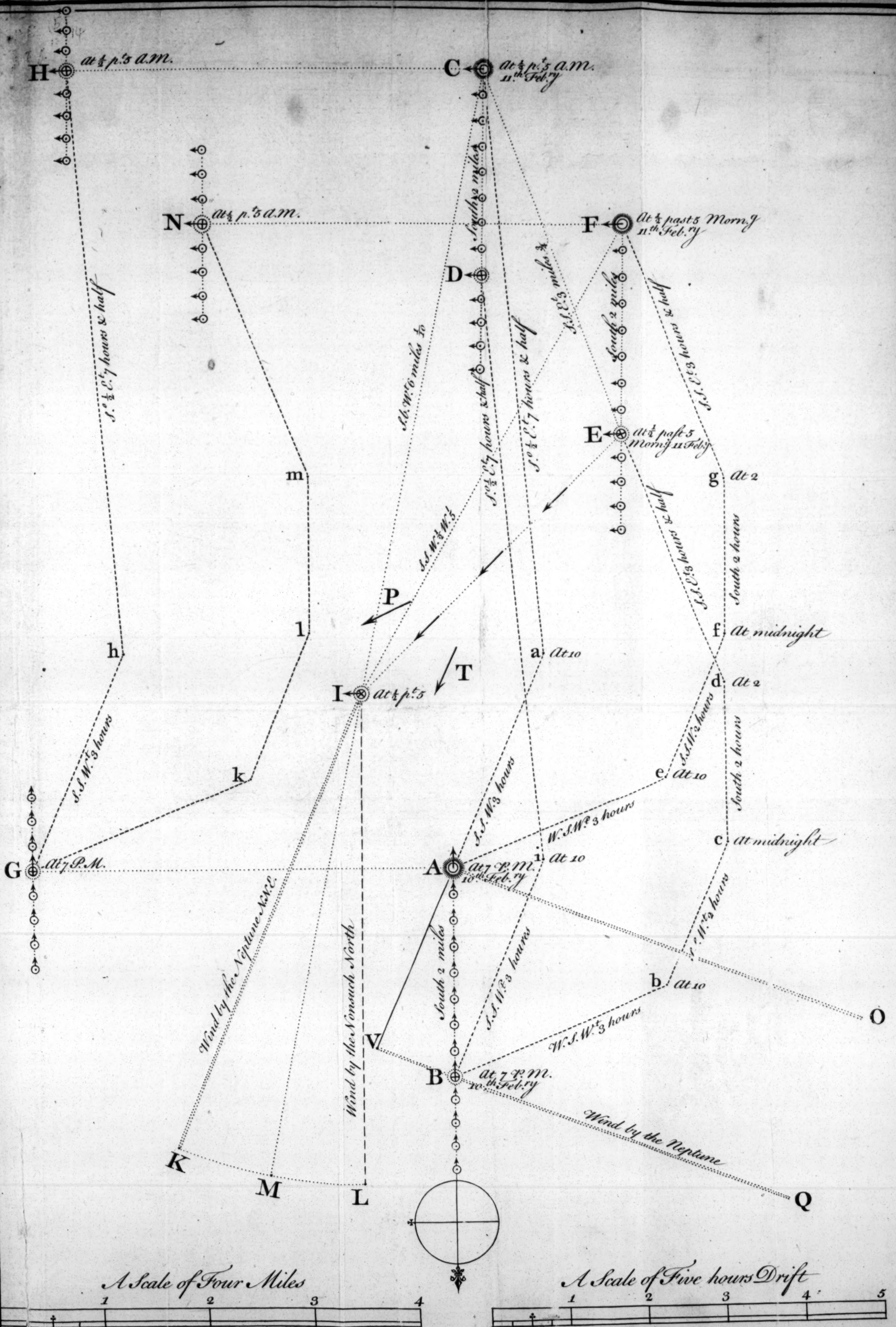
AND my being in the Line, proves, that instead of my being six, five, or four Miles to windward of the Admiral at the Time of my bringing-to, I was then to leeward of him ; for the Wind being with me at E. S. E. as represented by the Line of it, V, B, Q , the Lines $V A$ and $B i$ being at right Angles with the Line of Wind V, B, Q , (and with $A O$ parallel to it,) the Distance from V to B shews that I was at B , at the Time of bringing-to, three Quarters of a Mile to leeward of the Admiral at A , which Proof will be supported by the Testimony of a Multitude of Evidences.

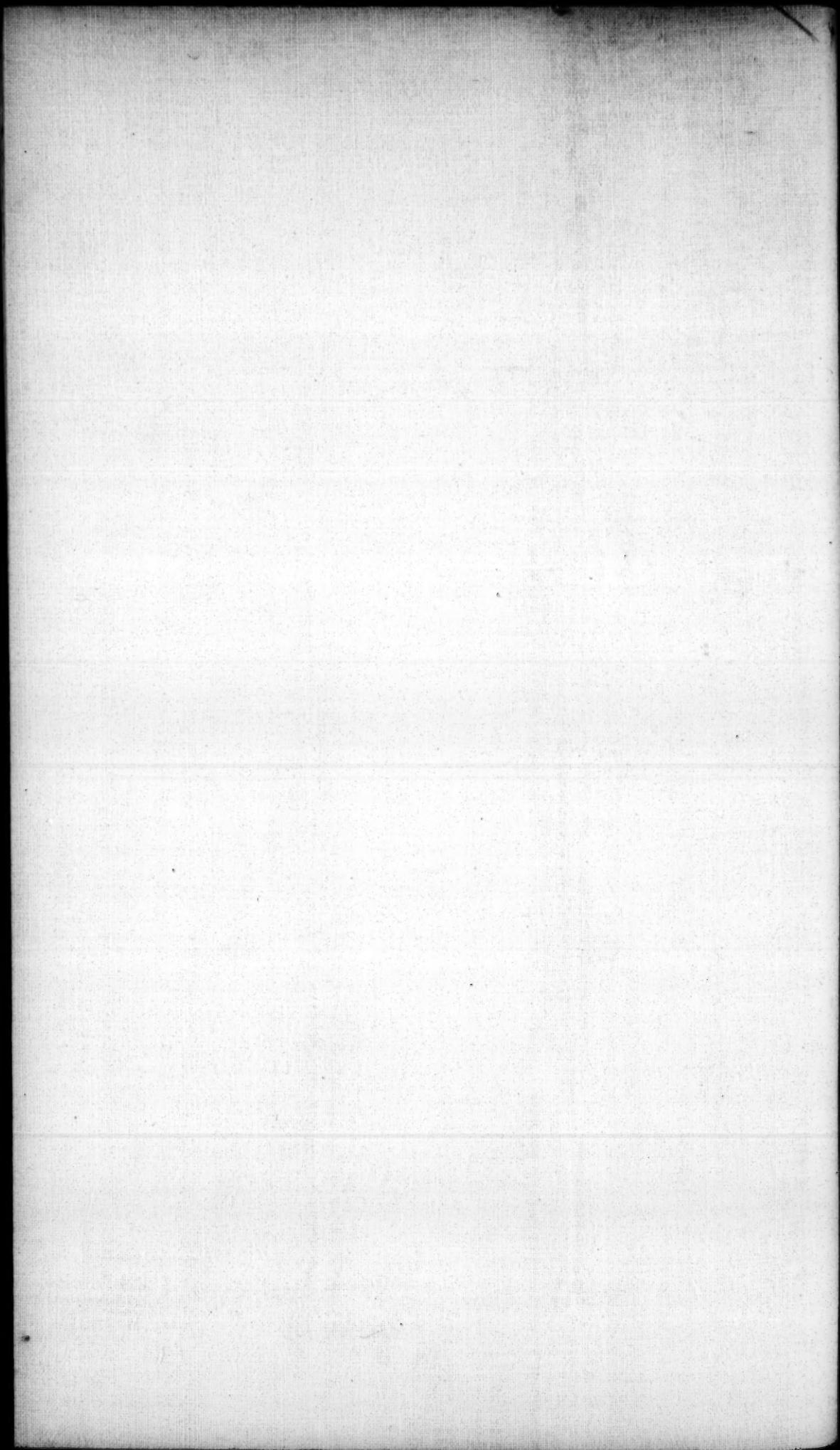
AND yet, with regard to our Distance in the Morning, if the Admiral's Ship in the Time of lying-by, did not lie according to the general Custom (Time immemorial) with her Helm hard-a-lee, and her Mizzen abroad ; the want of the Mizzen added to the Effect of the Helm lying in any different

rent degree of Position, from the usual one of hard-a-lee, must have occasioned such an increase of distance betwixt our Ships, as was observed between Night and Morning ; and might have increased it to, at least, twice as much, without any Current at all ; and having since the Time of the Action, been told, that the *Namur*'s usual Manner of lying-to, was with her Helm but partly to leeward ; and the Question therefore, having been put to the Lieutenants, and every other Evidence belonging to the *Namur*, who might most reasonably have been expected to know and declare to the Court, how her Helm lay usually when she lay by ; and in particular, how it lay during that Night ; altho' none of them have own'd that it did not lie hard-a-lee ; yet their not denying it to have lain but partly to leeward, affords a reasonable Ground for concluding what I have heard of it to be true.



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[The degree of position, from the first one off and
a-lee, must have occurred, such an interval
distance between our ship, and was observed between
Night and Morning, and might have increased it
to, at least, twice as much, without any change
at all, and having since the time of the action,
been told, that the Master's usual manner of lying-
to, was with her Helm but partly to leeward;
and the Captain therefore, having seen but to
the Enderbury, and not having any business belong-
ing to the Master, who might most properly
have been expected to know and declare to the
Court, how her Helm lay, and whether it lay to
and in particular, how it lay during that Night, and
the "none of them have seen a boat it did not lie
hard-a-lee; yet their not saying so, have been but
partly to leeward, and partly to windward, and
concerning what I have heard of it to be true.





A
 RECAPITULATION
 Of the WHOLE
 EVIDENCE
 Given on the
 CROWN SIDE,
 So far as Relates to the
 First, Second, and Third Articles
 OF THE
 CHARGE against Vice-Adm^l. *Lestock*.

W H I C H

Would have been finished by him, with proper Observations, and an Application made on the Whole, for the Consideration of the Court; had not his Evidence been closed by the Court, after examining only twenty-eight Witnesses, of a List containing one Hundred and forty-eight, and each Member of the Court declared himself satisfied that the Charge was groundless, and not proved; which made it unnecessary for the Prisoner to compleat this Piece, by prolonging his own Confinement, or refusing to receive an honourable Acquittal, when by this Means it was unanimously offered him.

*Quem mala stultitia, aut quæcunque inscitia veri
 Cæcum agit, insanum Chrysippi porticus & grex
 Autumat.*———HOR.

*He who's to Folly or to Vice inclin'd,
 Or whom dark Ignorance of Truth doth blind,
 The Stoicks call him mad.*

8
A
RECAPITULATION

Of the Evidence

EVIDENCE

Given on the

CROWN SIDE

So far as Relates to the

Fifth, Second, and Third Articles

OF THE

Charge against Vice-Admiral Boscawen

W H

FH

MUSEUM
BRITANNICUM



I Come now to make a few Observations, and to state the Evidence given in support of a Charge of the most heinous Nature, which if I was in any degree guilty of, I should justly merit the severest Punishment that Martial Law can inflict. I shall endeavour to recapitulate the Substance of every Witness's Testimony, and apply their Evidence to the several Articles of the Charge, in order to enable the Court to form a Judgment with a more entire Satisfaction to themselves in a Matter of such Importance to the Publick, as well as to me.

SELF-Preservation teaches me to communicate all the Light and Strength that I may think, proper to give the Court a full Knowledge of my unfortunate Case ~~voluntarily~~ I have that Confidence in the Justice and Impartiality of my Judges, that whatever I mention, that may not carry with it all imaginable Force, nor require their just and most serious Consideration, will be imputed to the Anxiety and Apprehensions of a Man grown old in Service; that sees Life, and what is more valuable, Reputation at Stake; in which Situation

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he would be extremely cautious of omitting what may possibly contribute to purge himself of Crimes, which his Soul abhors, and of which he is entirely innocent.

MY Minutes of the Evidence called against me, amount to two thousand Pages in Manuscript, Folio; but I shall endeavour to be as brief as this vast Variety and large Field of Matter will admit; and will intrude on the Patience of the Court as little as possible.

It requires a much abler Hand than mine, and a much longer Time than that since the Evidence for the Crown has been closed, to digest and discuss Minutes of so great a length, and such a Nature: But this Task, difficult and perplex'd as it is, I am oblig'd to undertake, and I hope the Court will weigh every Circumstance, and allow for any Omissions which may proceed from want of Time, and more proper Talents to explain and support my Innocence.

THE Method I shall follow is the same with that which I took when I began my Defence, and gave the Court a View of the Nature of my Evidence in Contradiction to the Charge against me. In like Manner I shall pursue the same Method, and place the whole Testimony, the Witnesses for the Crown have given, under the several Articles
of

of the Charge, which they were brought to support. By which Means the Court will have a Summary of the whole Evidence, and be the more able to judge whether any, and what part of the Charge has been proved by the Witnesses called in Behalf of the Crown, or whether the Foundation of it is not entirely groundless; and after all the extraordinary (and I may say unjustifiable) Methods that have been taken to bring Witnesses to give Evidence against me, I might not, with Safety, have rested my Cause, without calling one Witness on my Side.

To enumerate all the Absurdities, false Conclusions, and notorious Self-Contradictions, would take up too much Time, and trespass too much on the Patience of the Court; I shall therefore only recapitulate what I think the most essential Part of the Whole, and lay before the Court, as concise and significant a View as I can, without dwelling too much upon the Particulars, which only to read, without being pointed out or observed upon, will sufficiently, and for ever expose the Authors of them, and shew to the World their Partiality, Prepossession and Prejudice.

In following the Method I propose, the Court will be satisfied by their Minutes or particular Notes (notwithstanding it may be somewhat difficult to search into such long Examinations, for

Contradictions and Observations which may be at great Distances from one another) that I exaggerate nothing ; but that as near as possibly a Man's Evidence can be taken from Questions and Answers, I strictly adhere to the Words of the Witness ; as also to give the Prosecutors for the Crown no Cause of Complaint, and to do those Witnesses Justice, whose Judgment and Conception, of Discipline from their Rank and Seniority in his Majesty's Service may be supposed to be held in the greatest Esteem, I shall range under the several Articles, in order to illustrate and explain the Evidence more perfectly, the several Opinions and Interpretations of the eminent Witnesses that have been called on the Crown-side.

To begin. The first Article of the Charge against me is, That on the 10th of *February* Admiral *Mathews* did cause the Signal to be made for the Fleet to form the Line of Battle a-breast ; and it being then fine moderate Weather, and Wind fair and sufficient to have formed the Ship in which I was, and those in the Division under my Command in a Line of Battle a-breast, pursuant to the said Signal, and that I did not obey the said Signal ; but notwithstanding the same, kept and continued with my Ship, and the Division under my Command, six, five, or at least four Miles to windward, and a-stern of my Station, contrary to the Discipline of the Navy, and in Breach and Violation of my Duty. IN

IN support of this first Article, there is not a Witness out of the 70 examined against me, that has said that there was Wind fair and sufficient for me to have formed the Line of Battle a-breast, or that I did not obey the said Signal, but kept and continued with my Ship and my Division six, five, or at least four Miles to windward and a-stern of my Station.

ON the Contrary, all the Witnesses that have spoke to this Article, have declared, that by my leading the Fleet out of the Bay, it was impossible for me and my Division to be situated otherwise than to leeward of the Center and Rear-Admiral's Divisions, and nearest to the Enemy ; that I used my utmost Endeavours to form the Line of Battle according to the Signal. *James Moore*, Master of the *Norfolk*, is so particular as to say, I was but two Miles from the Admiral at four o'Clock ; and even Captain *Paulet* of the *Oxford*, says, that he never perceived I shortned Sail from bearing away when the Signal was made for the Line a-breast to bringing to at Night, and that he saw me a-breast of the Admiral about four o'Clock, with the Signal for the Line a-breast flying on board of my Ship.

THERE is not one Witness says that the Line a-breast was form'd on the tenth of *February*, or that the Center and Van Divisions were formed
into

into a Line together, or each Division in a separate Line by themselves. Most all the Witnesses agree in the Testimony they have given, that it was impossible to form the Fleet into a Line of Battle that Afternoon in so little Wind and so great a Swell; Captain *Forbes* in particular, says, the little Wind there was came so late in the Evening, that there was not time to form the Line before dark, when the Admiral brought to.

THERE is not one Witness who has said that I brought to, to windward and a-stern of my Station, imputed the Cause to any Neglect of mine before the time of bringing to, but to my not continuing under Sail with my Division, after the Signal was made to bring to; except *James Moore*, Master of the *Norfolk*, who having declared there was Wind enough for all the Division to have formed the Line a-breast that Afternoon, afterwards says, the whole Fleet seemed to endeavour to form the Line; and in Contradiction to all the Witnesses examined on the same Side, says, that several of my Division had only their Top-sails, and sometimes their main and mizen Top-sails aback, and that it was in my Power to come up and join the Line (though there was no Line formed according to what he had already said) before the Signal to bring to was made.

UPON

UPON this Article, from the Proof that has appeared before the Court, the Situation of the Admiral who was to the Eastward of me when he made the Signal for the Line a-breast, the little Wind and Swell, and more particularly the Backwardness of most all the Witnesses answering me what Sail the Admiral kept abroad that Afternoon, and how much he might be supposed to go between the Time the Signal was made for the Line a-breast to the Time of bringing to ; it may be justly inferred, that had I lain to, and not made Sail with the Admiral when he made the Signal for the Line of Battle a-breast, even such a notorious Neglect, as this would have appeared to be, could not have carried the Admiral from me the least of the Distances with which I am charged in bringing-to, to windward and a-stern of my Station.

THE second Article of the Charge against me, is, that in the Evening of the tenth of *February*, the combined Fleets, being about one, two, or at most not three Leagues distance from his Majesty's Fleet, and were then in a regular well-formed Line of Battle, and in full Sight and View of his Majesty's Fleet ; and that I being so to windward and a-stern of my Station as mentioned in the first Article, the Admiral (to prevent the Fleet being too much extended, and that I and my Division might come up and close the Line of Battle) caused
the

the Signal to bring-to, to be made, at which time, and after, and for several Hours before, the Signal for the Line a-breast was abroad, notwithstanding which I did, on the said Signal to bring-to, totally disregard and neglect the Signal for the Line of Battle, and immediately brought to with my Division six, five, or at least four Miles to windward and a-stern of my Station in the Line of Battle, in Breach and Violation of my Duty, and to the great Danger of his Majesty's Fleet; and that I did not cause the Ships under my Command to be put in a Posture to fight, or formed in a Line of Battle, nor did make or repeat the Signal for their so doing, but that the Ships under my Command, were brought to in Disorder, and at too great a Distance both from the Admiral and from the Line, contrary to the Discipline of the Navy and the Signals aforesaid.

BEFORE I proceed to mention the particular Proofs of the several Witnesses brought by the Prosecutors for the Crown in support of this second Article, it is necessary for me to observe, that not one Witness has declared that the Admiral to prevent the Fleet being too much extended, and that I and my Division might come up, and close the Line of Battle, caused the Signal to bring-to to be made, at which Time, and after, the Signal for the Line a-breast was abroad. In Contradiction to this part of the Article, all the Witnesses agree, that

that our Fleet was not sufficiently extended, as appears by the concurrent Testimony of every Witness; that the Rear-Admiral did not bring to a-breast of the commanding Officer of the Enemy's Van, nor the Admiral a-breast of the *French* Admiral, but that both their Divisions were not properly extended, which proceeded from want of Time, the little Wind and Swell, and the Admiral's going down before the Wind in Confusion, before he had extended the Fleet in a Line of Battle a-head.

It has not appeared in Proof before the Court, that the Signal for the Line a-breast was flying on board of the Admiral's Ship, either at the Time of bringing to, or after; according to the Words of the Charge, except by the Deposition of Captain *Henry Osborne* of the *Princess Caroline*, who (tho' placed in the Van of the Fleet with seven Ships between him and the Admiral, besides Frigates) has said, even what the Witnesses from the *Namur* and the Ship next a-head, and a-stern of her, could not say, that this Signal was out; though in the Course of his Examination he contradicted this Part of his Deposition, and affirmed with every other Witness, that a Day-Signal for the Line a-breast could not be seen, when the Night-Signal was made in the Evening for bringing to.

M

CAPTAIN

CAPTAIN *Paulet*, who swears with greater Extravagance, and exceeds every other Witness, in every part of his Evidence against me, more particularly in Distances, which are generally as long again as any of those sworn to, even by the Witnesses he commanded, does not prove that I brought to, at least four Miles (the shortest Distance of the three, mentioned in the Charge) to windward and a-stern of my Station in the Line of Battle ; and he and *Allwright* (his Steward) are the only two Witnesses, in Contradiction to all those who have been asked the Question, that have said that the Fleet was brought into great Danger by my bringing to in the Manner I did, which I shall touch upon when I come more regularly to that part of their Evidence.

EVERY Witness belonging to my Division that has been asked, has declared that his Ship has been so far in a Posture to fight, as to be clear for Action ; nor has one Witness said, that I did not cause the Ships under my Command to be formed in a Line of Battle, and I did not make or repeat the Signal for so doing, but that the Ships under my Command, were brought to in disorder. On the Contrary, it has been proved by the Witnesses on the Crown Side, that my Division from the *Dunkirk* the headmost Ship, to the *Revenge* the sternmost Ship, brought to in a
Line

Line of Battle, and each Ship at a proper Distance from another : No Witness has said that I did make or repeat the Signal ; the Captains *Long* and *Drummond* in particular, have declared, that I repeated all the Signals excepting that for engaging the Enemy ; therefore the whole of this Article that has the least Shadow of Proof of any one Witness to support it, may be confined to that of being charged with bringing to, six, five, or at least four Miles to windward and a-stern of my Station, and at too great a Distance from the Admiral, but not from the Line ; because there is not the least Appearance of Proof that the Center was formed in a Line ; as most (if not all) of the Crown Witnesses declare the contrary. And in particular, Captain *Purvis*, who says, that the Center Division did not bring to in a Line, and that he was obliged to fall a little after the Fleet brought to, for the *Princessa* to wear, which Ship was then on the starboard Tack, and stationed according to the Line of Battle the second a-head of the Admiral in the Line a-head on the larboard Tack. Lieutenant *Arbuthnot* of the *Somerset*, not only confirms the Evidence of Captain *Purvis*, by saying the *Princessa* was to windward of the Admiral in going down the tenth, and never shortned that Distance ; but says, that he is certain, the Center Division was not in a regular Line, and that the *Somerset* brought to the tenth on the Admiral's larboard Quarter to wind-

ward between the Admiral and me, out of her Station in the Line of Battle ; for his Captain did not apprehend that it was the Admiral's Intention that they should bring to in a Line, only in such a Station as to be able to form the Line in the Morning.

AND *Duncan Grant*, Master of the same Ship, says, that the *Somerset* could not with her studding Sails, and Topgallant Sails, keep up with the *Namur* ; and that the *Somerset* brought to, the Evening of the tenth, to windward of the Admiral ; and that the Center Division was not regularly formed when they brought to.

AFTER having mentioned this general and concurrent Proof in Contradiction to this Article, I shall now proceed to state the particular Evidence, which in the least seems to prove my having brought to, to windward, and at too great Distance from the Admiral.

IN support of this second Article, Capt. *Paulet* says in his Deposition, I brought-to to windward and distant from the Admiral, at least seven Miles and at least seven Miles from the *Spanish* Center ; in his Examination *viva voce*, he says that the Night-Signal to bring to, was made at six o'Clock, and at bringing to, the *Oxford* was about a Mile or three Quarters of a Mile from me who bore West of her, and that the Rear of the Enemy was eight or nine Miles distant from

from the *Oxford*, and seemed to bear West of me ; by which he makes me to be a greater Distance from the sternmost Ships than from the *Spanish* Center. In the Honourable House of Commons when he was examined by a Committee of the whole House, for enquiring into the Cause of the Miscarriage, he said the Rear of the *Spanish* Division was nine Miles from us (meaning my Division) to leeward ; so that he has lessen'd my Distance about two Miles since that Time.

ALLWRIGHT (Captain *Paulet's* Steward, who with submission to the Court, appears to be as good a Disciplinarian, as any one Witness of a Captain that has been called against me, who has answered to the Questions of Opinion and Discipline, except Captain *Drummond*) says, that I brought to, too far to windward and a-stern of the Center, but he can't positively say the Distance, nor how far I must have run to leeward to have been in a Line with the Center, or what Distance my Ship or the *Oxford* was then from the Admiral. He is asked how the Admiral bore of the *Oxford* at bringing to ; his Answer is three Points or better on the starboard Bow ; that I was upon the *Oxford's* Beam, and that the Admiral was about two Points upon my starboard Bow. And he was thereupon told by the Court, that he had proved me to be to leeward of the Admiral, after he had just proved by his Deposition that I brought to, too far to windward. He says, that at bringing to, he
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saw the Admiral's Lights and Hull but can form no Judgment of the Distance the *Oxford* was from him, and when he is asked if he cannot judge of his Distance from the Admiral ; how can he tell I was too far astern of the Admiral ; his Answer is, because my Lights appeared farther forwards than they should have done. And when the Question was repeated, how can you tell that the Vice-Admiral brought to, too far a-stern of the Center, when you can't tell the Distance the Admiral was from you ; his Conviction appears by his Silence.

HE says the *Oxford* was four Miles from the Enemy when she brought to, which Distance is four or five Miles, short of the Distance which Captain *Paulet* says the *Oxford* brought to at from the Enemy, and as the *Oxford* was about half a Mile to windward of me ; it makes my Distance to be between three and four Miles from the Enemy.

ALLWIGHT having said that the *Oxford* was to the Northward of me on the tenth in the Afternoon, was asked how I then bore of the *Oxford* ; his Answer is, that I bore two or three Points on her larboard Bow, and the very next Question which was put to him, was, how did the Admiral bear then of the *Oxford*, he said two or three Points upon the *Oxford's* larboard Bow ; upon which it was observed by the Court, that he proved me to be a-head or to leeward of the Admiral

ral; then he said he did not mean exactly two or three Points, but the Court reply'd, the Conviction appeared, and that he did not recover himself till the Absurdity or Contradiction was pointed out. In several of his Answers he says the *Oxford*, when the Signal for the Line a-breast was made on the tenth in the Afternoon, was to the Northward of me, and in Answer to the first Question I asked him, he says she was the Southermost Ship in the Fleet.

LIEUTENANT *Fortescue*, says in his Deposition, that about six o'Clock the Night-Signal was made to bring to, and that the Ships in my Division, brought to pretty well in a Line. In his Examination he says, that I used my utmost Endeavours to close the Line after the Signal was made for the Line of Battle a-breast, which I repeated; and he cannot accuse me of any Neglect of Duty, Breach of Order, or Signal, or Backwardness in getting into the Line from the Time the Signal was made, to the Time the Signal was made for bringing to. In his Deposition he says, that when I brought to I was on the Admiral's weather Quarter, about two Miles to windward of his Wake, and a-stern, between four and five Miles from the Admiral, and about four Miles from the Enemy, tho' in several Answers to Questions put to him, he declares, it was so dark at the Time of bringing to, that he could not see the Headmost of my Division, nor the Enemy's Ships, nor does he remember how they brought to, or
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how they bore. Farther in Answer to a Question he says the Admiral was on my lee-bow after bringing to, but could not tell how much; It is then observed by the Court, that as he could not tell how much on my lee-bow; he could not tell that I was two Miles to windward of the Admiral's Wake. And it is also remarked by the Court, that as he did know the Center Division brought to in a Line, it was impossible for him to tell whether I brought to, to windward.

JOSIAS FOWNES, Master of the *Oxford*, in his Deposition says, that my Division was not in a Line of Battle a-breast immediately before bringing to, nor in a Line with the Admiral's Division, nor properly closed; that I brought to, to windward on the Admiral's larboard Quarter about five Miles distant; that when brought to, my Division were in a regular Line with one another about half a Mile distant, tho' his Captain says a Mile from each other. In his Examination he says, the *Oxford* was half a Mile or better on my larboard Quarter; that after bringing to, the Admiral was mostly a-head from the *Oxford*, not wide upon her Bow, distant three or four Miles if not more. By which he flatly contradicts his Deposition, and makes me to be a much smaller Distance from the Admiral than five Miles, the Distance ascertained in his Deposition. In his Examination he farther says, that the *Real* was three or four Miles from the *Oxford* wide upon her starboard Bow; and being asked, what

what distance he reckon'd the *Oxford* was from the nearest Ship of the Enemy she brought-to abreast of ? His Answer is five or six Miles I believe, so that he makes me, as well as the *Oxford*, to be two Miles less distant from the *Real*, than the Ship I brought to a-breast of ; and if he does not contradict himself, at least he contradicts that part of the Article of the Charge, where it is said that the combined Fleets were in a regular well-formed Line of Battle.

SAMUEL WOODGREEN, Mate of the *Oxford*, says in his Deposition, that I brought to a good way to windward of the Admiral ; and in his Examination, he says, he believes, there might be two or three Miles to the best of his Judgment between the Admiral and me, when we brought-to. Being asked, as he had said in his Deposition that I brought-to a great Way to windward of the Admiral, and yet did not see the Admiral's Lights or Ship, what Foundation he had for it ; his Answer is because I brought-to, so far to windward of the Admiral, he can say no more ; upon which the Court observed as he could not confirm his Opinion, it could have no Weight.

JOHN HOLLIS, Midshipman of the *Oxford*, having positively swore in his Deposition, that I brought-to, to windward and out of the Line ; in the Course of his Examination, declared,

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he knew of no Line being formed by the Center, nor the Distance of my Division from it: Nor could he distinguish the Admiral's Lights. He was thereupon asked, Whether it was possible for him to judge of any Ship being to windward or to leeward, if he never saw her: But he made no direct Answer.

Now that I have mentioned the whole Evidence of the Witnesses belonging to the *Oxford*, in support of the second Article of the Charge, I must return again to their Commander, who says, alone, that each Ship in my Division brought-to a Mile a-funder from another; consequently my Division was extended seven Miles besides the Length of the Ships, and that I must have run three or four Miles directly to leeward, to have been in my Station according to the Line; which Distance, great as it is, and not corroborated by any one Evidence on the Crown-side, is half a Mile short of the least distance with which I am charged in bringing to a-stern, and to Windward of my Station. That he saw the Signal for the Line a-breast flying on board of my Ship at four o'Clock; that I was then a-breast of the Admiral; that the Fleet were under their Topsails with little Wind and a great Swell; and tho' he never perceived me to shorten sail from bearing away to bringing-to, yet one of his Reasons why I did not continue a-breast of the Admiral till bringing to, was, the Dif-

Distance the Admiral did gain of me in failing between four o'Clock and six, which was in that Time two Miles or one and a half; and another Reason was, the Admiral's altering his Course and hauling more to the Southward. That as I was at four o'Clock equally to leeward with the Admiral, and as the Admiral could not gain of me above two Miles, or one and a half, from four o'Clock to the Time of bringing-to, he could not be further to leeward of me than one Mile and a half or two Miles at the End of two Hours, any other way than by the Wind shifting. And in support of this, he says, the Wind varied constantly between four and six o'Clock, and there was little of it. Notwithstanding, he says, in another Place, that at four o'Clock the Wind was E.B. S. and at bringing to, he is positive it was E. B. S. for he looked at the Compass. And when he is told to take as many Points as he pleased, a Variation in the Wind could make none in the Distance; and that still there could be but two Miles Difference, he is dumb and makes no Answer.

WHEN I examined him (after a Debate in Court, the Result of which directed him to Answer my Questions) he persisted that the Admiral's hauling to the Southward, was partly the Occasion of bringing him to leeward of me; that I steered a-stern of the *Spanish* Center, or rather to the Northward, and a-stern of the Enemy's Rear: And he

he knew of no Line being formed by the Center, nor the Distance of my Division from it: Nor could he distinguish the Admiral's Lights. He was thereupon asked, Whether it was possible for him to judge of any Ship being to windward or to leeward, if he never saw her: But he made no direct Answer.

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does positively say, what he alledges he had said already, that this Course did carry me to Windward of the Admiral at the Time of bringing to.

THIS Course which he so positively Asserts, brought me to Windward of the Admiral, must have brought me to leeward, because the more the Admiral hauled to the Southward, and I steer'd to the Westward, the more must I have been to leeward ; nay, I must have steered more Points to the Northward of the West, than he did Points to the Southward of the West, as well as brought the Wind on my Starboard Quarter to have been any distance to Windward of the Admiral at bringing-to ; and even such a Course which would have been so Remarkable as could not have escaped the Observation of the whole Fleet, tho' it would have disjoyned the Divisions greatly, and increased the Distance between us, could not possibly have brought the Admiral three or four Miles directly to leeward, which is the Distance positively sworn to by Captain *Paulet*, tho' in this, as well as in every other Particular, he Swears extravagantly, beyond any other Evidence on the Crown Side.

WHAT is more Extraordinary in this Gentleman's Testimony, when he finds by the Number of explanatory Questions that are put to him, he cannot account for so great a Difference in the Distance,

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as my being 3 or 4 Miles directly to Windward of the Admiral in two Hours sailing by what he alledged, *viz.* What the Admiral out run me in that Time, his hauling to the Southward, and the shift of Wind between four and six o'Clock (which he Swears to be Inconstant and Constant, as he thinks it serves to vindicate his Testimony) He is the more particularly staggered, when he is Taught that a shift of Wind could not help him out, as he is thereby struck Silent, and makes no Answer to the Court. And it may be supposed to be for this Reason, that in answering me, he says, that if he has not accounted for my being at least seven Miles from the Admiral at bringing-to, and there was any of that distance wanting, it is very easy to Account for it by the unaccountable Currents that every body knows run about those Islands. These are his Words—Yet many Questions after, when I ask him, whether in the Night I might not be subject to an Indraught and Current (which has been acknowledged by a great Number of Witnesses) while the Admiral was in the Offing in the Current that runs to the South-West, which might Occasion an Increase of distance between us in the Night. Then he says, he does not know of any Indraught or Current.

CAPTAIN *Paulet* who charges me with being at least seven Miles from the Admiral, does not say he observed any Opening between the head-
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most Ship of my Division, and the sternmost of the Center; nor can he tell what distance there was between them. *Allwright* (his Steward) who will speak to no distances, except the *Oxford's* being on my Larboard Quarter half a Mile from me, and four from the Enemy at bringing-to, confirms this part of his Evidence, by saying, he took no Notice of any Opening between our Divisions; though in another Place, he says, that my Division was not closed with the Center, but at the same Time allows, that his Situation was such that he could not see the headmost of my Division, and the sternmost of the Admiral's. If I had brought-to so great a Distance to windward and a-stern from the Admiral, as Capt. *Paulet* positively affirms, the Separation of the two Divisions would have been so Remarkable, that it could not have escaped the Notice of these two Witnesses, nor hardly any one Witness on the Crown Side.

CAPTAIN *Paulet* says, that he saw some of the Admiral's Signal Lights in the Fore-shrouds for bringing-to; and in another Place, he says, he did not see them, and that those Lights could not be so well distinguished as Poop-Lights; but that he saw the Admiral's Poop-Lights, tho' he was eight Miles from him; and notwithstanding it was an hazy Night, it is his Opinion, he could have seen the Admiral's Poop-Lights three Leagues off: the Impossibility of which I submit to the Court,
and

and whether, as Captain *Paulet* allows me, to have been a-breast of the Admiral at four o'Clock, and that he never saw me shorten Sail, nor has it been said by any one Witness that I brought-to, before the Admiral made the Signal to bring-to; it is not most reasonable to conclude, that I continued in a Line a-breast with the Admiral to the Time of his bringing-to, as every thing that Captain *Paulet* says, tends to prove this, and nothing but a positive Assertion, unsupported by either Proof or Probability, intimates any Thing to the Contrary.

CAPTAIN *Paulet* says, That my bringing-to brought the Fleet in no imminent Danger, but the Danger of not being at hand to assist the Body of the Fleet in the Morning, when he expected to attack the Enemy; but he is brought to acknowledge, That if the Instructions are positive, it was the Commander in Chief that brought the Fleet into Danger, by making the Signal for bringing-to.

ALLWRIGHT (his Steward) who says, that the *Oxford* was about four Miles from the Enemy, and half a Mile to windward of me; and as to any other Distance he says, he never pretended to form any Judgment of. Being asked again, and again, where my Station must have been, if I had brought-to agreeable to the Signal, his Answer is, that had I brought-to, according to the

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Signal for the Line of Battle ; I must have been a great deal nearer the Enemy ; and when the Question is repeated, he says, this is all his Answer. How I could well be nearer than between three and four Miles) the Distance he makes me to be) to the Enemy, who he says, were brought-to in a regular Line of Battle, which he distinctly saw, and not to be to leeward of the Admiral or Center of our Fleet, according to the general Proof that has been given with regard to the Distance that the Center brought-to from the Enemy, I submit to the Court. But what is very extraordinary, this Witness, who says he could distinguish my Division not to be in a Line with the Center, can't tell how much they wanted, or how far, or what Distance our Divisions were a-head or a-stern of each other. This Witness, who being asked how he could determine our Divisions were not in a Line a-breast, as the *Oxford* was neither a-breast of the Admiral, nor me, and he could not distinguish the Distance from the Admiral, makes an unintelligible Answer ; and being asked again, how he could tell I was too far a-stern, when he could not tell what Distance the Admiral was from the *Oxford* or me, he is silent and does not Answer the Question. Yet this Captain's Steward, without any one positive Matter of Fact to support or confirm an Opinion, which therefore can have no Weight ; nevertheless
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does take upon him to say, that he apprehended the Fleet was brought into Danger by my bringing-to where I did, because I was not near enough to succour the Admiral, tho' he confesses there was no Action that Night, and the Admiral from thence could be in no Appearance of Danger, but that I was not near enough next Morning to the Admiral, who wanted the Succour of my Division to attack the Rear of the Enemy's Fleet: And when he is asked thereupon whether the Admiral's Division was not of sufficient Strength to attack them, he says, he does not apprehend that it was the Admiral's Intention then to attack the Enemy, and makes some Answers to Questions put to him on this Point, which are unintelligible and absurd, and would take up too much Time to observe upon.

CAPTAIN *Paulet* says, that the Admiral before dark could distinguish that my Division was not in a proper Station, and that he could judge by my Guns in repeating the Signal for bringing-to, that I intended to bring-to with my Division, as also the Distance I was then from him, as it had not been dark above a Quarter of an Hour; that before dark the Admiral could see the Disposition of my Division, and consequently could have made (if he pleased) my Signal to have made more fail, and not left it to my Discretion any more than he did in the Morning on the 11th, when he made my Signal to make more fail. That it is the principal Duty and Qualification of a

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commanding Officer to keep the Fleet in a Disposition fit to give and receive Battle; and that when his Orders for that Purpose are not executed to their full Intent and Meaning, it becomes immediately his Duty to use his Authority, to reform any Neglect or Error in an inferior Officer, particularly any notorious Breaches of Duty, which are of a dangerous Consequence, as soon as it is in his Power; and that there could not be a greater or a more urgent Occasion than his sending to me by a Boat or a Frigate to alter the Disposition of my Division according to his Meaning.

No Witness that has been examined on this Point has denied so far to be the Duty of a Commanding Officer, and I dare say, it will have the Approbation of this Court. Captain *Marsh*, who with many others, has acknowledged this indispensable Duty, being asked four Times, if there could be a more urgent Occasion for sending a Boat or a Frigate to me with Orders to alter my Disposition; he, at last says, he does not know.

EVERY Witness that has been examined on this Point, has declared that a Boat might have passed between the Admiral and me, without Danger, except Captain *Paulet*, who says, he should not have chosen to have gone; and the Swell was so great that a Boat could not pass without Danger. And indeed Captain *Bentley* seems to make some Dif-

Difficulty in a Boat's being able to pass, when he is asked, If the Weather was such, that if the Admiral had thought me too far to windward, he could not have sent a Boat with Orders for me to come down with my Division? He says, there was a great Swell; which Answer I take the Liberty to say, as he himself was sent that Evening with a Message on board the *Essex*, does not at all add to the Reputation and Weight of his Evidence.

To do Captain *Paulet* Justice, and to illustrate his Evidence given in support of this Article of the Charge against me, I will connect together his Opinion and Conception of Discipline; as also what Mr. *Allwright* (his Steward) has declared on this Matter, and mention the Whole to the Court.

CAPTAIN *Paulet* says, That tho' there was a Foundation for the Admiral to rely on my Discretion, at the Time of my bringing-to on the 10th. Yet as the Admiral trusted to my Discretion, and found that I did not make Use of that Discretion, (allowing my Instructions and Orders were discretionary) I ought to have been superceded, and that Discretion which I did not make use of properly, was not to be trusted for three Days together in the Sight of the Enemy's Fleet.

THAT a Commander in Chief must depend on the Judgment of every Officer for the Execution

of Signals or Orders, and in that Case depends on another's Judgment for his own Disposition. That the Instructions are to be positively obeyed, but not instantly till the Officer thinks his Ship in a proper Station to obey ; by which he makes them no Instructions at all.

THAT tho' there was no Signal for the Line a-head on the tenth in the Afternoon, and I cou'd not possibly bring-to in a Line a-breast, and the Signal for bringing-to directed the windwardmost Ships to bring-to first, and the last Signal made is always to be obeyed, yet it was my Duty to bring-to in a Line a-head. *Allwright*, his Steward, says, that the Signal for the Line a-breast did not direct the Ships in the Fleet to bring-to a-head of one another. Captain *Paulet* says, that complying with the Sailing Instructions is not a sufficient Authority for the weathermost Ships to bring-to first, tho' the Words of the Signal direct it. Neither was the Enemy laying to, and to leeward of our Fleet in a Line of Battle, a proper Guide to regulate our Motions by. When *Allwright* was asked, if ever he had read the Instructions, he declares never ; but acknowledges that if the Instructions directed the windwardmost Ships to bring to first, to besure I did right ; upon which the seventh Article was read, and he repeated that I had done right ; Then the Court observed, it was very extraordinary, that he should come there
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to accuse a Person of doing wrong when he did not know what was doing right or wrong.

CAPTAIN *Forbes*, of the *Norfolk*, says in support of this Article, that towards the Evening on the tenth he saw my Division wide and a-stern withall and nearer in Shore than the Admiral, but he cannot say the Time it was, nor recollect the Distance I was from the Admiral; that the Admiral with his Division did not bring to in a Line of Battle; that he brought to about four Miles from the Enemy, and who were in a good Line; that he did not take Notice of any delay in my coming up with my Division to form the Line, and that there was so little Wind, and so great a Swell, that he could make but very little way through the Water; that he did not see me with my Division when the Night-Signal was made to bring to, nor does he remember a Circumstance relating to any other Ship but his own.

CAPTAIN *Philip Toms*, late Lieutenant of the *Norfolk*, who was so scrupulous, when the Judge-Advocate tender'd him the common Oath, by which he was to give his Evidence, as to object to it as too severe, though in several other Trials he had been examined by the same Oath, and was told so by the Court, says in his Deposition, that I brought to immediately on the Signal being made

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to bring to, without coming into my proper Station ; and after having declared several Times in his Examination, that I was on the *Norfolk's* Weather Quarter, when I brought-to ; he is ask'd, if he saw me when I brought-to, and his Answer is, he can't recollect ; which is a Contradiction to what he had before sworn to.

THIS Gentleman is very singular in his Evidence, he swears opposite to every Witness on the Crown Side, that the whole Fleet appeared to be in a pretty good Line a-breast about four o'Clock on the tenth in the Afternoon, except that the Admiral was a-head of his Fleet three or four Miles, in order as he supposes to make the Enemy's Fleet plain before Night.

JAMES MOORE, Master of the *Norfolk*, says, he saw me repeat the Signal for bringing to, and that I was not then in a Line with the Center Division, which he does not say was formed in a Line. In his Deposition, he says, the Admiral steered down upon the Enemy W. S. W. but in his Examination he says S. W. that he could see my Ship after I had brought to, but not my Lights. In Answer to a Question, he says, that when I repeated the Signal to bring to, I bore E. N. E. upon the *Norfolk's* starboard Quarter ; and soon after in answer to another Question, he says, I was three Points on her larboard Quarter, and that
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when I was three Points on that Quarter he does not know whether I was brought to or not.

I SUBMIT to the Court, whether these Witnesses belonging to the *Norfolk*, have said any thing in support of this Article ; the Distance of their Station in the Line from me, makes them very incompetent Witnesses. Indeed Captain *Forbes* says nothing, and if the other two say any thing, their Self-Contradictions destroy their Credibility.

CAPTAIN *Towry* of the *Buckingham*, says, that in his Judgment I brought-to, to windward of the Admiral and distant from him about four Miles ; and that I brought to soon after the Signal was made without getting into my Station, but in regard he said he never intended to judge of my Station, his Deposition was altered in Court, and instead of the Words, *his proper Station*, the Words *nearer the Admiral*, were inserted. In his Examination he declares when I brought-to, I was not much out of my Station ; if any thing, that I was a Point on the *Buckingham's* lee Bow, and that the Admiral was on the *Buckingham's* lee Bow about two Points, by which he proves me, rather to be to leeward than to windward, in Contradiction to his Deposition ; that the sternmost Ship of the Enemy was about three or four Miles from the *Buckingham* at bringing to, and she filled in the Night, and went farther to leeward from the
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Buckingham; in his Deposition he says, the Wind was E. N. E. at bringing-to, and in his Examination E. by S. or E. S. E. which the Court taking Notice of, he says it is a Mistake, upon which the Wind was altered in his Deposition to E. S. E.

CAPTAIN *Montague*, late Lieutenant of the *Buckingham* in his Deposition says, that the Ships in the Rear of my Division brought-to in a Line; that I brought-to to windward of the Admiral, and he believes four or five Miles distant from him; that I was two or three Miles from one of the *Spanish* Ships when I brought-to, and that the *Buckingham* was about two Miles from the nearest Ship of the Enemy. In his Deposition he says, I brought-to about six o'Clock, and in his Examination about five. That the Fleet was never formed in a Line a-breast on the tenth, that he believes he has said that I brought-to, two or three Miles to windward of the Admiral, that there was something of that in his Deposition, and he would not willingly vary from that, which was taken a-Twelve-month ago; that he knows my Division brought-to greatly to windward of the Admiral, but can't recollect the Distance; by which he makes me to be equally as far to windward of the Admiral, as he says my Distance was from the Enemy, which is very incredible, for according to this Testimony, the Admiral must have got down as far to leeward as the Enemy, whose Line,

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as expressed in the Charge, and the Proof that has appeared, was regular and well-formed; but the Impossibility of the Admirals being even so near the Enemy as two Miles and a half, which even Captain *Montague* ascertains to be my Distance, appears from the Proof of every Witness, who has declared the Distance the Admiral brought-to, to windward of the combined Fleet, with the *Essex* and *Winchelsea* between him and it.

DANIEL LIEL, Midshipman of the *Buckingham*, says, I was to leeward of the Center, and that my Division at bringing-to was pretty well formed and nearest the Enemy.

LIEUTENANT *Cricket* of the *Buckingham*, who had two Depositions read in Court, which were observed to be contradictory to each other, says, that the Ships in my Division were in a Line with each other, and brought-to abreast of the Rear of the *Spanish* Fleet; that the *Buckingham* was about two Miles distant from the Enemy; that the Line of Battle was never formed in our Fleet, but can't tell which Division was a-head or which a-stern; that at two o'Clock the Admiral and I, were pretty near together, and when we brought-to we were six or seven Miles asunder, and at the same time, says, he did not see the Center Division, outfail, or drop my Division; that I might have run down farther, and brought up in

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the Line with the Admiral, as there was nothing in the Way; and in answer to the very next Question put to him, he says he does not know whether I could or not without going to leeward of the Enemy.

LIEUTENANT *Prescott*, of the *Buckingham*, who had also two Depositions read in Court, which were observed likewise by the Court to be contradictory to each other; says, that I brought-to to windward and a-stern of the Admiral at least five or six Miles; that the *Buckingham* was about two Miles from the Enemy at bringing-to; that I might have closed the Line, though he does not know whether the headmost Ship in my Division was closed or not with the sternmost Ship of the Center Division. In his Deposition he says, that the Enemy was in a well-formed Line of Battle when I brought to, and in his Examination he says, the sternmost Ship was two Miles to windward of her Admiral.

LIEUTENANT *Mountford*, of the *Buckingham*, who, if possible, exceeds all his Ship-Mates in Contradictions and Absurdities, says, that I did not bring-to in a Line or abreast of the Center Division, but that I was upon the Admiral's weather Quarter, distant about five or six Miles; and that the Ships in my Division were not brought-to at a regular Distance from each other; though he says they endeavoured to get into the Line of Battle, and he did not see any one Ship that neglected

lected to do his utmost. To one Question he answers, he could not see the Enemy when we brought-to; and to many others he says, he could distinguish them very plain; that I was five or six Miles from the Admiral when I brought-to; but he did not see the Admiral; that when I brought-to he did not observe where I was, nor did he see me, and yet he ascertains the Distance the Admiral and I were asunder; in his Deposition he says, I was at the same Distance in the Morning of the eleventh from the Admiral as I was on the tenth at Night, and in his Examination he says, the Distance was increased.

THESE Witnesses belonging to the *Buckingham*, all agree in my nearness to the Enemy at bringing-to, by which, and the Proof there has appeared before the Court, as well as the Words of the Charge, that the combined Fleet, brought-to in a regular well-formed Line of Battle; they prove that I was to leeward of the Admiral, instead of being to windward when I brought-to, and that had I run four Miles (the least Distance mentioned in the Charge) or three Miles and a half to leeward, according to what Captain *Paulet* alone, positively advances, would have brought me in my Station in the Line of Battle, I must (according to the concurrent Testimony given by the Officers of the *Buckingham*,) run nearest two Miles to leeward of the Enemy.

CAPTAIN *Godsalve* of the *Romney*, exceeds even Captain *Paulet* in my Distance from the Admiral at bringing-to, as he does every other Witness with regard to my Distance from the Admiral, at the Time the Signal was made for the Line a-breast, which he says, was about five or six Miles ; there is not a Witness has said that the Fleet was extended so much at that Time, and if it had, my Ship must have been the Northermost and the Admiral's Ship the Southermost, to account for so great a Distance between us. But by my leading the Fleet out of the Bay, it has been proved, that I could not be otherways situated, than to leeward of the Admiral when this Signal was made, as his Division, and the Rear-Admiral's Division were under a Necessity of passing by me to the Eastward in order to form the Line a-head, agreeable to a Signal made a very little Time before, which as there was neither Time nor Wind to execute, consequently if that Distance between us could have been, I must have been the greatest part of it to leeward of the Admiral.

ALL the Witnesses agree in the Testimony they have given, that for want of Wind the Fleet was in Confusion, and that I was to leeward. Captain *Paulet* confirms this, for he says, his Ship was the Southermost Ship in the Fleet, when the Signal for the Line a-breast was made, and about four o'Clock

o'Clock he got into his Station a-stern of me, where he found me a-breast of the Admiral. How I could be at the Time the Signal was made for the Line a-breast, so great a Distance from the Admiral, as Captain *Godsalve* has said, is not supported by either Proof or Probability ; but upon this Distance, (extraordinary and contradictory to every other Evidence as it appears to be,) does he found my being three Leagues distant from the Admiral when I brought-to, and the Increase of Distance of three or four Miles between us from the Time the Signal for the Line a-breast was made, to bringing to, he imputes like Captain *Paulet*, to the Admiral's outfailing me, and hauling a little more to the Southward than I did, which Course must occasion my being more to leeward and not to windward.

THIS Gentleman says, that during that Afternoon he did not observe me to shorten Sail, and not endeavour to join the Line ; that I brought-to soon after the Night-Signal was made, and the Ships in my Division, were not as he thinks in a Line with the Center, though they might have been, by continuing under Sail after the Admiral had made the Signal to bring-to, and had brought-to ; that he did not see the Admiral when he brought to ; that the Admiral was two Points on his lee Bow, or two and a half when he brought to ; that he in the *Romney* brought-to about a
Mile

Mile from me on my larboard Quarter, and that she was three Leagues from the Admiral. As this Witness takes upon him to determine Distances and Bearings of a Ship from him and me, though he owns he did not see her, his Evidence can have no Weight, and the Injury he has endeavoured to do me, must in the End retort upon himself. But even by his Bearings of the Admiral from him, and my Situation to leeward of the *Romney*, instead of my having been to windward of the Admiral according to his Deposition, he has brought me to leeward.

LIEUTENANT *Jones* (Captain *Godsalve's* first Lieutenant) in the *Romney*, says, that I brought-to immediately after the Night-Signal was made, and that I was then three or four Miles to windward and a-stern of the Admiral, which is about one Third of the Distance his Captain has sworn to. But this Gentleman, like his Captain, has also sworn, that I brought-to to windward of the Admiral, though he says he did not see the Admiral, nor the sternmost Ship of his Division when I brought-to. In his Examination he says, the Admiral made the Night-Signal to bring-to, but he does not know whether I repeated it, tho' as he says, he was within a Mile of me, and three, four, or five from the Admiral, which distances he has spoke to, he heard Guns three, four, or five Miles off, but could not hear them one.

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LIEUTENANT *Kearney* of the *Romney*, agrees with Lieutenant *Jones* of the same Ship, and makes my Distance from the Admiral, when I brought-to, to be three Miles (one third of his Captain's Distance) that I brought-to on the Admiral's weather Quarter, and that the Ships in my Division did not bring-to in a Line with the Admiral's Division nor properly closed, though he knows nothing of the Distance between the headmost of my Division and the sternmost of the Center, or how far they wanted of being closed.

LIEUTENANT *Graves* of the *Romney*, says, that I endeavoured to form the Line; that the *Romney* was about a Mile to windward of me, when I brought-to; that he saw the Admiral's Hull and Lights after he brought to and that I brought-to a-breast of the Rear of the Enemy, distant between three and four Miles.

JOHN BICKNAL, Midshipman of the *Romney*, says in his Deposition, that I brought-to to windward of the Admiral, and in his Examination he says, he does not know where I brought-to; that when I brought-to, I was a Mile and a half a-head of the *Romney*, and that the Admiral was three Miles, by which he brings me within a Mile and a half of the Admiral.

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THESE four last Witnesses destroy the Credibility of their Captain, with regard to the Distance he has said I was from the Admiral, when I brought-to; and with the Witnesses from the *Buckingham*, they concur to prove this Article of the Charge entirely groundless.

CAPTAIN *Nucella*, late Lieutenant of the *Marlborough*, says, That I made what sail I could to keep the Line; that the Line was never really formed, and thinks there was not Time sufficient to form it; that he believes I was three or four Miles distant from the *Marlborough*, (the next Ship to the Admiral) when I brought-to, and that I was not right a-stern of her, but upon her Larboard-quarter; that the *Marlborough* was about two Leagues from the Enemy when she brought-to, a-stern of the Admiral; that my Division was nearer the Enemy at the Time of my bringing-to, than the Center Division; that I might be two Points on the *Marlborough's* Weather-quarter, and yet in the Line a-breast, before bringing-to; which Truth, I can't help observing to the Court, most of the Witnesses seem to have been ignorant of, otherwise according to their Manner of giving Evidence against me, I am apt to think they would have been sure to have declared that the Admiral was more Points on my lee-bow than what they have sworn to:

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And in support of what I say, which could proceed from nothing but their want of Judgment, in many Depositions it is said, That I brought to, to windward of the Admiral; and when the Witness has been examined on his Deposition, it has appeared that what he judged to be to windward, was the Admiral's being a Point, one and a half, or two Points on my Lee-bow. I would not be thought uncharitable, nor say any thing unbecoming to this Court; but I think I have great Reason to say, that as many of the Crown Witnesses have seemed not to want Inclination to support this Article, and thereby destroy me, that their want of Knowledge has discovered the Truth, and been of great Service to me.

LIEUTENANT *Hale* of the *Marlborough* says, that when I brought-to, he saw my Lights (which must have been my Signal Lights in repeating the Signal or the common Lights of my Ship or Division; for, after my bringing-to, in his Situation from me, it was impossible he could either see my Top or Poop Lights) and that they bore two or three Points on the *Marlborough's* Larboard-quarter, distant about three or four Miles from her or the Admiral; that in so little Wind, and so great a Swell as there then was, a Ship ought not to have brought-to, nearer to another, than three quarters of a Mile; I must therefore observe that as there were seven Ships in the Line between the

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Admiral and me, reckoning three Quarters of a Mile between each Ships, the Distance will be five Miles and a Quarter; so that according to his Judgment I brought-to, about a Mile and a half nearer to the Admiral than I should have done.

LIEUTENANT *Ballet* of the *Marlborough* says, he came upon Deck between six and seven o'Clock, when he saw Lights two Points upon the *Marlborough's* Weather-quarter, when the Ship came to and fell off, which he took to be the Lights of my Division; that the *Marlborough* brought-to pretty near a-breast of the Rear of the Enemy's Fleet, and that the *French* Admiral was upon her Bow, and the *Spanish* Admiral upon her Beam; that he did not see the Hulls of the Enemy but their Lights; and they seemed to be lying-to in a very regular Line; that our Center might have gone up a-breast of the Enemy's Center before we brought-to; and that the Admiral might have placed himself opposite to their Center as they lay.

LIEUTENANT *Palliser* of the *Effex* (which Ship brought-to between the Admiral and the Enemy, after the Signal being made to bring-to, where he was not in a Situation to distinguish whether I brought-to, to windward of the Admiral, or what distance from him,) says, That my Division was
not

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not formed : and that I brought-to, considerably to windward of the Center upon the Admiral's Weather-quarter. In Contradiction to this he says, he saw me bring-to; and that I was then at a proper Distance to give Room for the Ships stationed between the Admiral and me; that if any Ship had been so remarkably negligent as to bring-to six, five or four Miles a-stern, and to windward of her Station, he must have observed it; as also, that if there had been any extraordinary Distance between the Headmost Ship in my Division, and the Sternmost in the Admiral's, it would have been so remarkable, that he must have seen it; that he apprehends the Reason the Line was not formed, was, the Center Division went too fast to allow the other Divisions to get into their Stations; and that the Admiral that Afternoon had Top-sails and Fore-sail set, by which he went faster than my Ship with all her Sails set, as he observed next Day.

THIS Gentleman has given his Evidence so clear, and with so much Judgment in every other Part of his Examination, that it gives me a good deal of Pain to mention the Mistake, he had, I dare say, inadvertently fallen into; but I think I am under a Necessity of doing it, that the Prosecutors may have no Cause to say, I was so unfair as to state the Facts he had said for me, and not those against me, which I would avoid, as I would the

Time of the Court being taken up by their Observations and Suggestions, on my not truly stating Matters of Fact as they have been given by the Witness in Evidence before the Court.

THE Lieutenants *Jekyll* and *Peyton* of the same Ship, (sensible of their Situation with regard to me on the 10th, when the Fleet brought-to at Night) do not pretend to determine whether I brought-to in my Station in the Line, or what Distance from the Admiral, or whether to windward or to leeward of him.

LIEUTENANT *Jekyll* in particular says, That being ordered down to lie between the two Fleets, having in the *Effex* brought-to about a Mile from the *Real*, it was so dark when the Signal was made to bring-to, that he could not distinguish how the Ships were, to make any Difference between the one and the other.

LIEUTENANT *Gore* of the *Effex* says, That the Admiral was to windward of the *Effex* when he brought-to, but can't say whether on the *Effex's* Bow, Beam or Quarter; he is told by the Court, That as he could see the Admiral's Lights, he could tell whether the Admiral was on his Bow, Beam or Quarter: But his Answer is, he can't, the Distance of Time is so long, and he has not a good Memory. He says, I brought-to, three or
four

four Miles directly to windward. On which he is asked, how he could judge of my being three or four Miles directly to windward of the Admiral, when he did not know whereabouts the Admiral was ; to which he answers, that when he saw me he thought so. That I might have gone farther to leeward after the Signal was made to bring-to ; yet in his Deposition, he says, the Signal directed the windwardmost Ships to bring-to first ; and to have continued under sail, would have been contrary to the Instructions.

THIS Witness determines my Distance to be three or four Miles from the Admiral, and my Bearings to be directly to windward of him, by which he makes the Admiral between the *Effex* and me, and speaks to the Distance and Bearings of my Ship from the Admiral, where there is no Possibility of his seeing or forming any Judgment ; but where he could both see and judge, as there could be no Obstruction to his Sight, he will not answer either to Bearings or Distance.

CAPTAIN *Bentley*, late Lieutenant of the *Namur* says, in his Deposition, That before the Signal was made to bring-to, having been sent on a Message on board of the *Effex*, he saw the Lights of my Division then lying upon the Weather-quarter ; that they were not in a Line with the Center Division, nor properly closed ; that I was four Miles

Miles distant from the Admiral, and two or three Miles directly to windward of him. In his Examination he says, That he does not remember any thing particular about me that Afternoon; that while he was on board of the *Effex* the Fleet brought-to, between six and seven o'Clock; and when he returned on board of the Admiral, it was past seven o'Clock, when Capt. *Ruffel* or some of the Officers desired him to look to windward, which he did, and saw the Lights of my Division; but can't say he saw any particular Ship: That my Division was three or four Points abaft the Admiral's Beam, and three or four Miles distant; that he saw the Lights, and did not know my Lights from any other, but he judged from the Center: That he believes Captain *Ruffel* knew of it; for he or some other Officer spoke to him of it.

THESE Lights which he says he saw, must have been the common Lights of my Division; for in his Situation from me he could not distinguish my Top or Poop Lights, neither does he pretend to say he could see them, or even any particular Ship of my Division. They then might as well be the Lights of the Frigates in my Division, that brought-to about a Mile to windward of me, and were the *Romney*, *Oxford*, *Nonfuch*, *Feversham*, and *Mercury* Fireship, as the Ships in the Line of Battle, because common Lights from them, could be seen as far as from the Ships in the Line; and at the
greatest

greatest Distance cannot be seen above the Distance of three Miles, if so far.

CAPTAIN *Ruffel*, who was the Admiral's Captain, who saw and knew as this Evidence says, the Position of my Division from the Center could distinguish whether I brought to properly or improperly, and he was too vigilant an Officer to omit acquainting his Admiral with a Neglect of mine, which was of so dangerous a Consequence, had not my Division brought-to in order, and in the Line according to that Station. In case then, that I had brought-to improperly, or to windward of my Station in the Line, Orders would have been sent to me, and as they were not, though a Boat or a Frigate might have brought them; It is a Proof, at least, a strong Presumption, that this part of the Charge is false and groundless. In Confirmation of what I have said, Captain *Marsh* says, that he was on board of the *Namur* after the Fleet brought-to, but heard no Words spoke by Captain *Ruffel* or the Admiral, expressing any Uneasiness at the Disorder the Fleet was in, or any particular Division.

CAPTAIN *Bentley* says in his Deposition, that the Lights of my Division were two or three Miles directly to windward of the Admiral, and my Division not in a Line, nor properly closed with the Center Division. In his Examination he
says

says, the Lights were three or four Points abaft the Admiral's Beam, and three or four Miles distant, which surely will not amount to being two or three Miles directly to windward of the Admiral, and tho' he had said in his Deposition that my Division was not in a Line, nor properly closed with the Center, yet in his Examination, he says, that when he was called to observe the Lights of my Division, he can't particularly say, he could distinguish how far the Rear of the Center was from the Van of my Division, as there were four or five Ships a-stern of the Admiral. But I must observe there were only the *Marlborough*, *Dorsetshire*, and *Rupert* at that Time, as the *Royal Oak* had not then joined the Fleet, and the *Effex*, according to what he before said, was a Mile to leeward of the Admiral when he left her.

IN his Examination he says, that he does not recollect whether the Fleet was formed or near formed before bringing-to; and afterwards he says, that the Admiral's Division all of them brought-to in a proper Station, and when brought-to and they came up they bow'd each other; that when the Ship brought-to a-head of the *Namur*, she was upon her Bow: Yet when he is asked whether the *Somerset* continued in her Station, or whether any of the Center Division was remarkably out of the Line to windward; his Answer is, he can't be certain. Lieutenant *Arbuthnot* and *Duncan Grant*, Master, both

both belonging to the *Somerset*, prove that the *Somerset* did not bring to in her Station, and in particular *Arbuthnot* says, she brought-to between the Admiral and me. Captain *Purvis* also, proves in particular that the *Princessa*, stationed the second Ship a-head of the Admiral in the Line on the larboard Tack, was out of her Station, because after the Fleet brought-to, he in the *Dunkirk* was obliged to fill for the *Princessa* to wear; which Ship was then on the starboard Tack. I mention this positive and certain Proof to destroy the Evidence of this Gentleman, where he says, that all the Ships in the Center Division brought-to, in their proper Stations in the Line of Battle; and though I am the only Person that has been thus cruelly attacked and charged with bringing-to with my Division improperly, yet I take upon me to say, it has been proved even by the Evidence on the Crown Side, that I brought-to more properly, and in better Order than the other Divisions; and therefore I shall also mention Captain *Bentley's* Evidence with regard to the Van, it will shew as far as a prevaricating Evidence can prove it, that there was no Line formed, and particularly that the Van was in Confusion. He says, that the Rear-Admiral's Division were all a-head of the *Namur*; afterwards he says, in answer to another Question, that the Ships in the Rear-Admiral's Division were all out of the Line to windward that Night: the Question being repeated, the Rear-Admiral's Division? his Answer is, he cannot tell. R H

HE says, that he can't tell my Position with regard to the Enemy; that the Enemy's Fleet brought-to before the *British* Fleet, and as far as he could judge by being a-breast of them, they seemed to be in a tolerable Line; that the Admiral brought-to pretty near the Center of the Enemy, if any thing the *French* Admiral was very near a-head of him; that he had the middle Watch, and does not know whether he saw one of my Division upon his being relieved; that he saw one of their Lights; that as I was a-stern of the Admiral as well as to windward, it was impossible for him to see my Top or Poop Lights; that the Lights he saw at first were those hoisted on bringing-to, which is contradictory to his Deposition, and the first Part of his Examination, for he calls them the Lights of my Division, by which he must mean the common Lights.

IN his Deposition he says, the Wind shifted during the Night from East to E. N. E. in that Case had I brought-to, as he says I did, by swearing to the Lights of my Division being so far to windward, I must have been a great Way before his Beam, pretty near a-head of him at four o'Clock when he was relieved, and consequently he must then have seen my Top and Poop Lights, which as he did not see, it is a Demonstration that I

was

was to leeward of the Admiral when I brought-to with my Division at Night.

CAPTAIN *Jasper*, late Lieutenant of the *Namur*, says, that he did not observe me bring-to with my Division to windward and out of my Station in the Line ; that the Admiral brought-to pretty near a-breast of the Center of the Enemy, which he calls the *Spanish* Admiral, as he afterwards explained himself.

CAPTAIN *Knowler*, late Lieutenant of the same Ship, says in his Deposition, that I did not bring-to in a Line with the Center, nor were the Ships of my Division closed with the Center, though they had it in their Power to do so, by continuing under Sail after the Signal was made to bring-to ; that I brought-to upon the Admiral's weather Quarter a League to windward of the Line, and six Miles distant from the Admiral ; that the Admiral brought-to three Miles from the Enemy and their Center was upon, or a Point before his Beam, and the *Real* much a-stern of the *Namur*.

IN his Examination he says, that the Line a-breast was not formed before bringing-to ; that he does not know whether the Ships in the Center Division brought-to in a Line of Battle, but that the Ships next a-head and next a-stern he thinks did ; though he says my Division did not

bring-to in a Line with the Center, and gives Evidence against me who was farther off, yet he will not or cannot say the Center was in a Line.

HE says, that at twelve o'Clock I was nearer to the Enemy than the Admiral, and when the Signal was made for the Line a-breast I was as near some of the Ships of the Enemy as the Admiral.

HE is asked how I came to be further from the Enemy than the Admiral at bringing-to? his Answer is, that the Order of Battle was changed, the Vice-Admiral to the Northward, and the Rear-Admiral to the Southward. Upon which he is asked, if that altering the Order of Battle, would alter the Distance between me and the other Divisions from the Enemy? he says, Yes. In the Evening the Center was a-head of the Vice-Admiral, and the Rear-Division; then he is told by the Court, that it would alter the Position, but not the Distance. In answer to another Question to the same Purpose, he says, the Enemy's Line was not quite in a parallel Line with ours (and yet has declared there was no Line formed) the Van of the Enemy inclined to the S. E. and when the Order of Battle was changed, the Rear-Admiral was to the Southward, and the Vice-Admiral was to the Northward, when we went down. But he does not know whether the Admiral went
down

down faster than I did, so that I could not keep up with the Admiral.

THAT he does not know the Distance between the Headmost of my Division, and the Sternmost of the Admiral's at bringing-to, tho' he says in his Deposition our Divisions were not closed. — He says, in Answer to a Question, he does not remember seeing the Sternmost of the Admiral's Division. — And in Answer to the very next Question, he says, he does not think that any of the Ships in my Division that he saw were nearer than two Miles, to any of the Ships in the Center Division; which however contradictory and inconsistent as this Evidence appears to be, is one Mile short of the Distance he charges me with being directly to windward of the Admiral, unless the Admiral was so much to leeward of the Sternmost Ship of his Division. — But as he swears he did not see the Sternmost Ship of the Center Division, I do not see by what Rule he can ascertain the Distance to be two Miles, because the Sternmost Ship which he did not see, might be properly, or at least very near closed with the Headmost of my Division.

I SUBMIT to the Court whether this Witness has not entirely contradicted, and defeated, in the Course of his Examination, what he has sworn in his Deposition, That when I brought-to I was
fix

six Miles upon the Admiral's Weather-quarter, and a League to windward of the Line, more particularly as he himself says, that the Line was not formed, and only answers for the Ship next a-head and next a-~~stern~~ of the Admiral, being in their Stations.

LIEUTENANT *Jenkins*, late Midshipman belonging to the *Namur* says, that he did not observe me to shorten sail, keep back, or delay coming to form and close the Line; and yet in his Deposition he says, I brought-to a great Distance to windward; and in his Examination, that I was three or four Points on the Admiral's Weather-quarter, distant six or seven Miles.

THE Question, Whether he saw me bring-to? is asked him, and repeated many Times to him, before he will give a direct Answer; and at last he says, he did not. — He says, he could not see my Lights, tho' he could see all the Ships of my Division six or seven Miles distant after they were brought-to; and it is observed by the Court, as he did not see me, How could he tell I brought-to six or seven Miles distant from the Admiral?

THE Manner in which this Witness delivered his Testimony, the Disgust he gave to the Court, as well as the contradictory Account he gave,
leaves

leaves me no room to observe farther on his Evidence.

THESE are the Witnesses from the *Namur*, what they have said to support this Article, I submit to the Court; the Captains were all made Captains by Admiral *Mathews*, since the Action, and two of them after the Time I was suspended by their Patron.

CAPTAIN *Marsh* of the *Winchelsea*, who repeated the Admiral's Signals, says, That he did not join the Fleet till sometime after it was dark. — That he does not know where he was when the Signal was made to bring-to; — Tho' in the House of Commons, when he was examined, he said the Signal was made to bring-to three Quarters after eight o'clock; yet when it was asked him in Court, he said, he could not tell. — That he did not know what Position the Fleet was in before, or when brought-to. — That he never saw them formed in a Line, nor did he see me all the Night on the 10th, having not observed any Ship a-stern of the *Marlborough*; that he is positive I was to windward of the Line when I brought-to, tho' he did not see my Ship, but only distinguished the Flash of my Guns. In his Deposition he says, that when I brought-to, he was a-breast of me, or rather to the Eastward of me. — That he kept under sail and run down to
leeward

leeward of the *Effex*, which convinces him, as there was a Breeze, that I might have run down farther to the Westward — That it was moderate Weather, and I might have run down into the Line, if I had thought proper. — But in the Course of his Examination he says, he can't tell whether the Center was in a Line, nor whether there was any Line formed thro' the whole Fleet.

CAPTAIN *Marsh* farther says, that the *French* Admiral bore a little before the *Winchelsea's* Beam after she brought-to, to leeward of the *Effex*; and that Lieutenant *Palliser* told him in what Manner he was to set the Enemy, which was to set the northermost and southermost Ship.—That they were set by the Compass; but he does not know how they bore by it. — That he ordered them to be set; but he does not remember he ordered a Report of their Bearings to be made to him; by which it appears he depended on others for doing what he should have done himself; and which, without his own Observation and Knowledge, cannot be deemed Evidence.—He is asked, What is the directive Part of the Night-signal to bring-to? and after giving three or four unofficer-like Answers, and after reading the Instructions twice, he is forced to acknowledge, that the seventh Article directed the windwardmost Ships to bring-to first; and that it was my Duty (by the Instructions) to bring-to immediately on the Signal being made. CAPTAIN

CAPTAIN *Peter Osborne* of the *Salisbury* says in his Deposition, that to the best of his Knowledge I brought-to upon the Signal being made to bring-to; and that I was then to windward of the Admiral; but how much I was to windward, or what Distance from the Admiral, he can't tell. That he does not know that I brought-to in Disorder. That if the Admiral had disliked my Situation he might have sent me Orders. — That the Line a-breast was regularly formed before bringing-to at Night. That some of the Ships were more to windward than others, and that the Rear Admiral's Division was to be sure a good deal to windward of the Admiral, when he brought-to. That there never was a regular Line.

AFTER stating these Contradictions, it seems unnecessary for me to observe upon this Gentleman's Evidence, who from his Situation and great Distance could not possibly judge with regard to me.

CAPTAIN *Henry Osborne* of the *Princess Caroline* says, that I brought-to to windward upon the Admiral's Larboard-quarter, but he does not know how far. — That he did not see me or my Division keep back or shorten sail, that we might not come up to form and close the Line. That I led the Fleet out of the Bay, but he does not remember

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on what Tack, (tho' the Line of Battle directs the Vice Admiral to lead on the Starboard, and the Rear Admiral on the Larboard Tack, and the Wind was North-Westerly in coming out of the Bay;) that by leading the Fleet I was nearer the Enemy than the Admiral and Rear-Admiral's Divisions.—That he can't tell what fail the Admiral made from the Signal being made for the Line a-breast till the Time of bringing-to, nor whether the Center outailed the other Divisions; but he believes not. — Which I must observe, if the Center did not do, nor he see it, how is it possible for him to account for my being to windward of the Admiral, according to his Deposition? When he allows me to be nearer the Enemy by my having led the Fleet out of the Bay, and that the Center and Rear Admiral's Divisions passed me to windward, or to the Eastward, in order to form the Line. — That he can't tell whether, if the Admiral before Night came on had observed me not to have been a-breast of him, but to windward and a-stern, he would in that Case have made my Signal to make more fail; and he believes that the Admiral would naturally conclude, that as he brought-to, I would come down into my Station in the Line. — That the Rear Admiral's Division brought-to in a Line with the Admiral; which I must observe is contrary to the Testimony of every Witness, including his own Brother, who has answered to that Point. — That

he

he could not see whether the Enemy were in a Line, because they brought-to before our Fleet did; and in the very next Question put to him, he says, they were lying-to in a Line; but he can't say parallel with his Ship, because of the coming to and falling off of the Ship.—That he brought-to, to windward of the Enemy, about six or seven Miles from them, that he was pretty near the Center; but afterwards he says rather towards the Van.—That he thinks the Fleets were pretty near extended alike; and that he must be towards the Van of their Fleet; and that the Admiral was near a-breast of the Body of the Enemy's Fleet.—That it was very proper to be as near the Enemy as we could, not to intermix Fleets.—That he thinks there was no Necessity for going nearer than we did, pretty near extended alike. But when he is told, that the Charge against me implies, that if I had been up with the Admiral he would have been better extended, he says, to be sure the Admiral would have been better extended if I had been up; and does not know whether that might not have been the Means of the Admiral's making sail more early in the Morning.—That the *French* in the Morning were then stretched away more to the Southward or to the South-West.—That our Fleet was not then equally extended; they were three Leagues or more from them; and the Reason of that was an

Action of the Enemy's not of mine—That he does not know what Sail either he or the Rear-Admiral brought-to under, because it is not in his Log-Book. This Gentleman first says, he was pretty near their Center at bringing-to, then says towards their Van, and afterwards says almost extended alike, the Admiral a-breast of the Center; but when he is told that the Charge implies that had I been up the Admiral would have been better extended, he says, to be sure; and says, that an Action of the Enemy's and not mine, occasioned their being extended a great Distance beyond the Van of our Fleet in the Morning; That at Night the Enemy were distant six, or seven Miles, and in the Morning seven, eight, or nine Miles off, he can't pretend to say,

I WOULD rather fall into Repetition than lose stating any part of this Gentleman's Evidence, because no doubt the Prosecutors for the Crown summoned him to give Evidence in support of the Charge, as he is an Officer of great Experience and Knowledge, and in case I should make any Omissions, and not gather the whole as full as I can, I might give Cause for Complaint; and as it is, and what I can't possibly help, the Witness may perhaps have an Occasion to say what he said of his own Deposition after it was read; that it was taken in Answer to a set of Questions that were asked him, which made it so incoherent a Thing; it seems to wave from one thing to another.

To

To clear and illustrate this Gentleman's Evidence as far as the Opinion he delivered in support of it will go, I think it incumbent on me to recapitulate what he said; that the Signal to bring-to did not supersede the Signal for the Line a-breast, because that Signal, (which I must observe he has sworn to be out at the Time of bringing-to) though it could not be seen at bringing-to, yet as it was not seen to be hauled down, it remained in force; that the last Signal is to be obeyed, and the Signals for bringing-to, and for the Line of Battle do not interfere with one another; that you may bring to and be in a Line; that when the Signal was made to bring-to the Line a-breast might have been continued by putting the Helm a-port; but afterwards when he is told that putting the Helm a-port would never bring the Ship to, on the larboard Tack, he says he means starboard, and it was a *Lapsus Linguae*; that the Signal to bring-to does not destroy the Line a-breast; that we brought-to on the larboard Tack, and still we were in a Line a-breast; that Signals are to be strictly obeyed according to the Purport expressed in the sailing and fighting Instructions; that making Sail in the Night after the Signal to bring-to was made, though it did direct the windwardmost Ships to bring-to first, would not have been a Breach of that Signal; as the Enemy were lying-to in the Line of Battle, I was not to bring-to according
to

to that Signal; that he does not pretend to tell the Court the Duty of a Vice-Admiral, but as an Officer in general, he thinks it the Duty of every Body to get into his Station, particularly when they are in the Face of an Enemy, lying-to in a Line of Battle. It is needless for me to observe on this Gentleman's Conception of Discipline; to repeat it is sufficient for me, and to submit it to the Court whether that the Motions of the Enemy or their lying-to in a Line of Battle, can ever authorize an Officer to disobey his commanding Officer's Instructions or the Signals that he makes, and whether Captain *Osborne* does not contradict himself at the same Time, when he says, that all Signals are to be strictly obeyed according to the Purport expressed in the Sailing and Fighting Instructions.

THESE two Brothers were Captains in the Van of the Fleet, and what is very extraordinary and absurd, they are called to support a Part of the Charge, which if true, was impossible for them to prove or support any otherwise, than by their swearing that I was at so great a Distance from them, that they could not see me; but instead of that, which would have been some small Proof, they have declared they saw me, and I shall not take upon me to say they are mistaken. But is it possible they could have seen me or my Division in a dark cloudy Night (according to Captain

Henry

Henry Osborne who has said it was) if I had been six, five, or at least four Miles, as the Charge says, a-stern and to windward of my Station in the Line? as such a Distance must have made me eight, seven, or at least six Miles from the Admiral, because in so little Wind and a Swell, it cannot be supposed I could have gone nearer the Admiral than two Miles, allowing for the Number of Ships between; which Distance joined to the Distance that they were a-head and to windward of the Admiral according to the Evidence given in general, must make their Distance from me about twelve Miles or more. I submit then whether their seeing me does not in a great Measure contradict this Article of the Charge they are brought to support, or at least the extravagant Distance which I am charged with, being out of my Station.

LIEUTENANT *Arbuthnot* of the *Somerset*, who after his Deposition had been read, in which there are several Facts inserted in support of this Article, acquainted the Court that he was a very improper Person to be called, because the *Somerset* having been ordered the tenth, the Day before the Action, upon the *Boyne* and *Chichester's* joining the Fleet, out of the Rear-Admiral's Division to the Vice-Admiral's, there was so little Wind and so great a Swell that it took up the whole Day to sail from the Rear-Admiral's Division to the

the Admiral's, when the Fleet was in great Disorder, and the *Somerset* never nearer me than five or six Miles.—I must therefore observe, that this is a strong Proof against this Article of the Charge: for as no Witness has denied, but almost all of them acknowledged, that I led the Fleet out of the Bay, and was by that Means nearest the Enemy, as the Center and Van passed to the Eastward and to windward of me; it shews the Impossibility of the Admiral's gaining or outsailing me the Distance mentioned in the Charge, when according to this Gentleman's Declaration, that the Swell was so great and the Wind so little, that it took the *Somerset* the whole Day to sail from the Van to the Center Division, that is, from being Mr. Rowley's Second, a-head of him on the larboard Tack, to being the third Ship a-head of the Admiral, the Difference of which Station in the Line was only the Extension of six Ships. If the *Somerset*, as good a sailing Ship as any three-deck Ship in the Fleet, excepting the *Namur*, could not reach her altered Station in a whole Day's Sail, it is impossible that the Admiral, who was to windward of me, could pass me to leeward, and outsail me in two or three Hours Sail, the least of the Distances expressed in the Charge; and much more impossible, as many of the Crown Witnesses have declared, that I did do my utmost to form and close the Line, and not one Witness has said the contrary.

BUT

BUT to return to Mr. *Arbuthnot*, who to make himself a more competent Witness with regard to my bringing-to, says, in Contradiction to *Duncan Grant* Master of the *Somerset*, (who declared that she brought-to a-head and to windward of her Station in the Line) that the *Somerset* brought-to the tenth at Night three Points on the Admiral's larboard Quarter, about three Quarters of a Mile from him, and between the Admiral and me; that the Enemy brought-to in a Line of Battle, but not the Center of our Fleet. In his Deposition, he says, that I was upon the Admiral's Weather-Quarter, when I brought-to, distant three or four Miles from him.—In his Examination he says, he did not see me particularly, but my Division; when the Question is repeated, he says, he can't charge his Memory, and afterwards says he saw me: In his Deposition, he says, that my Division were not in a Line nor properly closed, and he thinks that I might have made Sail to have joined the Center.—In his Examination he says, he did not see any of my Lights, either Signal or other Lights, nor can't charge his Memory whether he saw my Hull; that he can't tell the Distance between the headmost of my Division, and the sternmost of the Admiral's, nor whether he saw the Ships or not, but there seemed a Gap between the Divisions.—In his Deposition, he says, that when the Fleet

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brought-to, the Wind was to the Southward of the East; but in his Examination he says, he can't tell. After his Deposition was read, this Witness declared he was never nearer to me than five or six Miles, yet in the Course of his Examination, he says, that the *Somerset* brought-to between the Admiral and me; and in his Deposition he ascertains my Distance to be from the Admiral at that time between three and four Miles.

CAPTAIN *Berkely* of the *Revenge*, in his Deposition says, that at seven the Signal was made to bring-to, and I brought-to with my Division immediately after the Signal was made, and was not then in the Line, but four or five Miles to windward, and a-stern of the Admiral. In the House of Commons he said he brought-to five Miles from the Admiral. In his Examination he says, that I brought-to three or four Miles from the Admiral; that the Admiral bore of the *Revenge* when she brought-to about South West and in another Place he says, West South-West, and two or three Points on the *Revenge's* Lee-bow, by which he brings me as far to leeward as the Admiral; that the Ships in my Division were not closed.—That when I brought-to I did not wait for any of the Ships in my Division, they being all closed with me.—That he did not observe any Neglect in me to the Time the Signal

was

was made to bring-to, and that I did all I could to form the Line before dark, as did every Ship, but could not.—That he does not know that the Center brought-to in a Line, or whether the Line was ever formed.—That the Line was not closed before dark, and that he could not distinguish the Distance there was between the headmost of my Division, and the sternmost of the Center-Division.—But I must observe when he was examined in the honourable House of Commons, he said, that the *Dunkirk*, which was the headmost Ship in my Division, was within half a Mile of some of Mr. *Mathews's* Division.—In his Examination he farther says, that I brought-to according as the Signal prescribes; and as Things were then circumstanced the Fleet could not be brought-to in a Line a-breast.—And admits after being taught, that if the Fleet was in a Line of Battle before the Wind, and did bring-to immediately on the Signal being made to bring-to, that all the Ships must be on each other's Quarter.—That if the Fleet was brought into Danger, he cannot see how any Blame can fall on me for bringing-to, when the Signal was made, and that if the Fleet was brought into Danger by bringing-to, the Fault lay in the Commander in chief, who made the Signal, and was the proper Judge when the Fleet was to bring-to; that as it could not be my Fault that the Fleet was not brought-to in a Line a-head, and as it

was impossible to bring-to in a Line a-breast; he says he does not pretend to blame me at all.

LIEUTENANT *Williams* of the *Revenge* says in his Deposition, that at half past five o'Clock the Admiral made a Night Signal to bring-to; and at Six we brought-to with our Heads to the Southward.—In his Examination he says, that the *Revenge* brought-to a-breast of the Rear of the *Spanish* Squadron, and says, that I brought-to four or five Miles from the Admiral, tho' he did not see the Admiral bring-to, nor does he recollect my bringing-to.

LIEUTENANT *Tiddeman* of the *Revenge*, says in his Deposition, that I brought-to in the Evening four Miles from the Admiral, and a little upon his Weather-quarter. — In his Examination he says, he does not know what Distance there was between us; and when he is asked again, he says, to the best of his Judgment, they in the *Revenge* brought-to about four Miles from the Admiral, and a-breast of the sternmost Ship of the Enemy about four Miles distant from her. — That he came upon Deck presently after the Ship brought-to; and that I was two Points upon the *Revenge's* Lee Bow, and the Admiral was a Point upon my Lee Bow.

THESE

THESE Witnesses belonging to the sternmost Ship in my Division, entirely contradict and destroy this Article of the Charge, as they prove me to have been rather to leeward than to windward of the Admiral when I brought-to: — And as it is admitted and proved, that the combined Fleet brought-to in a regular well-formed Line of Battle, according to the Words of the Charge exhibited against me; and as it has been proved that my Division brought-to in Order, and at a proper Distance from one another; and they the Witnesses belonging to the *Revenge*, the sternmost Ship on the Larboard Tack, the fourth Ship a-stern of me, and the thirteenth Ship a-stern of the Admiral, that she brought-to about four or five Miles from the Admiral and a-breast of the sternmost Ship of the *Spanish* Squadron, or any of the *Spanish* Ships; is there the least Shadow of Proof that there could be any Space between the two Divisions, or that in such little Wind and so great a Swell, according to the Testimony of every Witness, thirteen Ships could have extended themselves in a less Distance, with Safety, in a dark Night? — Besides, admitting the Enemy lying-to in a Line of Battle regularly formed, was to have been my Guide and Direction, according to Captain *Henry Osborne's* Opinion, and some others of those Disciplinarians on the Crown Side; and that I was not to have brought-to as the directive Part of the Night Signal prescribes;

scribes; I submit this to the Court, whether in the Night there could have been a better Method of placing the Ships of my Division against the Enemy, who were in a Line, than by placing my sternmost Ship a-breast of the sternmost Ship of their Fleet. But what still makes this a stronger Proof in my Behalf, is the Proof that the Admiral did not bring-to a-breast of the *French* Admiral; and that the Rear Admiral's Division was not extended equally with the Enemy's Van, consequently those Admirals, excluded my Division the Distance that they brought-to a-stern and not a-breast of the commanding Ships in the Center and Van of the Enemy, which might have excluded some of the sternmost Ships of my Division from being opposite to any Ships in the Enemy's Rear, notwithstanding the Conduct of those two Admirals, who brought-to in this Manner, with the Ships in their Divisions in Disorder and Confusion, not properly extended, but the Ships wide and to windward of one another, it is manifest I brought the Ships in my Division into so close an Order, and so regular, that my sternmost Ship was opposite to the sternmost Ship of the Enemy.

THE Witnesses from the *Elizabeth*, the next Ship a-head of the *Revenge*, confirm and corroborate the Testimony given by the Witnesses from the *Revenge*.

JOHN

JOHN MAJOR, Master of the *Elizabeth* says, that when I brought-to, the Admiral was about a Point, or a Point and a half on my Starboard Bow, distant about a League, and that the *Elizabeth* was about four Miles from the Admiral; that the Line was formed in my Division that Afternoon; and that when the *Elizabeth* brought-to, there was one or two of the *Spanish* Ships a-breast of her, about a League distant; and that the sternmost Ship was abaft the *Elizabeth's* Beam.

LIEUTENANT Legg of the *Elizabeth* says, that the *Elizabeth* brought-to in her proper Station between the *Buckingham* and *Revenge*; that the Admiral's Lights then bore about two Points on her Starboard Bow; and that the sternmost Ship of the Enemy was a-breast about three or four Miles from her.

LIEUTENANT Norbury of the *Elizabeth* says, that I did not shorten sail before I brought-to, and that when I was steering with my Division a proper Course to form the Line a-breast, the Admiral was then on the *Elizabeth's* Larboard Quarter, distant three Miles. That the *Elizabeth* was in a Line with me when I brought-to; and that the sternmost Ship of the Enemy was about three Miles from her. That the two sternmost Ships of the
Enemy

Enemy seemed to stretch away from us after we brought-to.

CAPTAIN *Long* of the *Ruffel* says, that by my leading the Fleet out of the Bay, I was nearest the Enemy; that I steered a proper Course for closing the Line, agreeable to the Signal; and that I carried as much sail as I could. — That the Ships were in a Heap together for want of Wind to disperse them; and that the little Wind and Swell hindered the Fleet from forming in a Line. — Yet he says, he can't remember how much the Fleet might go between the Signal for the Line a-breast, and the Signal for bringing-to. — That the *Ruffel* was in a Posture to fight, and so was all the Division, he believes. — In his Deposition he says, the Signal for the Line a-breast was made between two and three o'Clock. — In his Examination he says, it was made between three and four o'Clock. — In his Deposition he says, that a Night Signal was made at the close of Day to bring-to. — In his Examination he says, he is not sure whether it was a Day or a Night Signal; but it was made at seven o'Clock, and it was dark. — In his Deposition he says, that I brought-to a short Time after the Signal was made: — That my Division was not in a Line a-breast with the Center Division, nor closed with it immediately before I brought-to, tho' they might have done it without any hazard to the Ships. In his Examination he says, he does not know whether

thier the Center Division was in a Line before bringing-to, because it was dark, nor that there was any remarkable Break between our Divisions.

— That I could not close with the Center before the Signal was made for bringing-to; but by keeping under sail afterwards I might have done it without Danger to the Ships, which he says would have been a Breach of Discipline and contrary to the Instructions. — In his Deposition he says, that I brought-to upon the Admiral's Weather Quarter a Mile to windward and four or five distant from him. — That the rest of the Ships in my Division brought-to at a proper Distance, and the Rear of the Enemy was about three or four Miles to leeward. — In his Examination he says, that the *Ruffel* brought-to pretty near in my Wake; and that the Admiral's Ship was a Point or two on the *Ruffel*'s Starboard Bow; by which I submit it to the Court, whether he does not bring me to leeward of the Admiral, instead of being a Mile directly to windward according to his Deposition. — And as a farther Proof of this, in Contradiction to what he swears in his Deposition, he says, that the *Real* was about three or four Miles on his Bow. — He can't say how many Points, but that my Distance and the Admiral's from the Enemy was pretty near alike. — That a Boat might have passed between the Admiral and me; and the Admiral had it in his Power to have sent me Orders in case I had brought-to improperly; and if he had

commanded, and had seen an Officer bring-to improperly, he would have sent him Orders to have come nearer, or into his Station. — In the honourable House of Commons, having been asked whether Admiral *Mathews* could see and judge of the Distance that I brought-to at, his Answer was yes, it was light enough to see. — But when I asked him the same Question in Court, his Answer was, he could not tell whether he could see the Distance I was from him or not. — He is asked five Times, whether when the Admiral brought-to, he could observe the Signal for the Line abreast flying, before he would give a direct Answer; and at last says it was too dark. Though it would be a needless Task for me to point out all the Self-contradictions and Absurdities of this Gentleman, who is the oldest Captain that has given Evidence; and tho' they are already, I believe, as manifest and evident to the Court, as his Prevarications were when he was examined in the honourable House of Commons concerning the Miscarriage of the Fleet, yet I cannot, as he is so old in Rank and Service in his Majesty's Fleet, let him pass without mentioning some Instances of his great Partiality and Prejudice against me, relative to this Article of the Charge: When any Questions of Opinion were asked him, he always referred them to the Judgment of the Court, until the Prosecutor's Questions were put to him, to every one of which he very readily gave his Opinion; and

and tho' he answered them, he afterwards absolutely refused to answer those I asked him, when it was observed by the Court, that if he had refused to answer the Prosecutor's Questions of Opinion, it had been better; but it was extraordinary he should answer them, and no others.—In answer to the first Question put to him by the Prosecutors for the Crown, he says, it is contrary to Discipline for a Commander to keep under sail, to be sure, when a Signal is made to bring-to; but notwithstanding that, every Ship may back or fill to keep in her Station, every body is to keep their Station and endeavour to get into it. — This extraordinary Partiality, whether it proceeded from seeing the Prosecutors Questions before he came into Court, and having Time to learn his Lesson, or from the Experience of his own Capacity, and knowing he could not make an Answer to the Questions of the Court, but what must expose his want of Knowledge, and confute the Charge, he came with earnest Inclination and Fervency of Heart to support, I don't know; but this unfair Method of giving his Testimony having been observed by the Court, he was told, he must give a Reason for his Opinion, or else it would have no Weight; and in consequence of his Answer to the Prosecutors Question, where there is a Determination of Station; and the Court wanting to know where that Station was, he was asked, what was my Station? Whether I was to bring-to according to the

Signal for the Line a-breast; and after putting Question upon Question to him, he continues to prevaricate. — His Answers are, that I could have bore down till I was in a Line with the Admiral; that I might have run down till I was in a Line; the Enemy was to leeward, the only way was to run near the Enemy, and bring-to in a Line. — Thus he continues to trifle and prevaricate: And after the Court had the Patience to teach him by many pertinent and explanatory Questions, which he could not possibly evade; — That if the Fleet had brought-to in a Line a-breast in consequence of the Signal, one half of the Fleet would have been to leeward of the Enemy; and if in a Line a-head, there was a proper Signal for it; so that the Station was undetermined, tho' by his Answer to the Prosecutors first Question there is a Determination of Station, which the Court wanted to know where it was; his Answer is, that I should have brought-to in a Line, but if it was to be in a Line of Battle a-breast it was impossible; and if the Fleet was to have brought-to in a Line a-head, there was a proper Method for it, if the Signal had been altered. Consequently as bringing-to in a Line a-breast was impossible, and the proper Method to bring-to in a Line a-head was not made Use of, nor the proper Signal made by the Commander in Chief, there could be no other Station than that which the Signal for bringing-to directed. — So that had I brought-to a Mile to windward,

as he has sworn to in his Deposition, and contradicted by his Examination in Court, this Opinion of Discipline, which with great Unwillingness at last was given by him, justifies me.

—— But what still discovers this Gentleman's Opinion to be strong in my Behalf, in spite of all his Endeavours to conceal it, which gives the greater Weight to his Evidence, as he is called to support the Charge, tho' this great Partiality shews no great Delicacy of Sentiment nor Punctilio of Honour, is, when he is asked, if he had been the commanding Officer of this Division, would he have thought it his Duty to have bore down as far to leeward as the Admiral, notwithstanding the Signal to bring-to, and have thought the Enemy's Fleet a proper Direction for him to have formed by? His answer is, that the general Instructions tell us, that the sternmost and weathernmost Ships are to bring-to first.

LIEUTENANT *Bates* of the *Ruffel* says in his Deposition, that about six in the Evening the Night-Signal was made to bring-to on the Larboard Tack. — And in his Examination he says, that he did not see the Admiral make the Signal to bring-to, and does not know whether it was a Night or a Day Signal, or whether I repeated it: And tho' he did not see this Signal made, yet he says I brought-to half an Hour after it was made; which Contradiction was observed by the Court. He says also, that my Division brought-to in a
to-

tolerable Line; That the *Ruffel* brought-to about five Miles from the Admiral, and was about two Points on his Weather Quarter.—By which he contradicts his Captain, who swears in his Deposition, tho' in his Examination he afterwards contradicted it, that I brought-to a Mile to windward of the Admiral.

OWEN GRIFFITH Master of the *Cambridge*, who has given a very extraordinary and contradictory Evidence, as well in support of the Charge against me, as in Contradiction to the Evidence he gave in former Trials, when his Deposition was read in Court; that I brought-to, to windward, and astern at least five Miles distant from the Admiral; that I might have got into the Line before I brought-to, and that I brought-to three quarters of an Hour after the Night Signal was made for bringing-to. He said, it was a Mistake in his Deposition, for he meant a Quarter of an Hour after the Signal was made; and it was accordingly altered to a Quarter of an Hour instead of three Quarters; and being asked whether he was sure there were no other Mistakes in his Deposition, his Answer is, he can't be positive. He says, that the Weather was fine all Night, and Moon-Light, and I might have bore down into the Line in the Night.—In his Examination he says, it was owing to the Admiral's sailing better, that the Line a-breast was not formed: And that when the
Signal

Signal was made, I was about one Mile and a half from the Admiral : At one Time in his Examination, he says, that it was not in my Power to come with my Division to form the Line before the Signal was made to bring-to : At another, that my Division was formed in a Line a-breast, before making the Signal to bring-to : At another, that the Line was not formed in my Division before bringing-to : At another, that my Division were in a very good Line ; and he took it the rest were : At another, that there was no Line formed that he knows of, only in my Division : At another, that I might have joined the Admiral's Line, and the Admiral was in a Line before dark : At another, that I brought-to, to windward of the Center, but that he did not see any Line formed by the Center Division. That he saw the Admiral's Lights, which bore South-West of the *Cambridge*, and the Ship came up South-East, and then South-East and by South, so that the Admiral was upon her Lee-Beam.——Here are repeated Contradictions upon the Back of one another, positive Affirmatives, and positive Negatives ; and this Witness not only notoriously falsifies himself, but he contradicts every Witness on the Crown-side.——His Ship on bringing-to, comes up South-East, and he makes the Wind East-North-East, contrary to every other Witness, who declare the Wind was to the Southward of the East, by which he brings the Admiral directly on his Lee-Beam, as
he

he says his Lights bore South-West, and my Ship to the North-West of the *Cambridge*, as he says, I was directly a-stern about half a Mile from her.—He says, that the *Cambridge* was four Miles from the Admiral, and half a Mile from me, and yet that the Admiral and I were five Miles asunder.—That if I had been directly a-breast of the Admiral, I would not have been above half or three quarters of a Mile wide, and to the Northward of him.—In that Case had I been a-breast, I must observe, there would not have been room for more than one Ship, considering it was Night, the little Wind and Swell between the Admiral and me.—What an incredible Difference is there between this Man's Evidence and Captain *Godsalve's*! The former brings the Admiral almost on my Beam, and the latter right a-head: The former makes my Distance to be almost directly to windward; for had I been a-breast of the Admiral, he says, I would have been only half or three Quarters of a Mile wide to the Northward of him; but the latter brings my Ship a-breast of the Admiral's, and to be entirely to the Northward of him; for after bringing-to, he says, the *Romney* was upon my Weather Quarter, and the Admiral was two Points on her Bow, and three Leagues from her: What an extravagant Difference is here, between nine Miles, and half or three quarters of a Mile!

OWEN Griffith says, that the last View he had of the Admiral in Day-light, was about half an Hour before bringing-to, and he appeared then to be three Miles and an half a-head of my Division; so that in half an Hour's Time the Admiral out-failed me a Mile and an half, as his Deposition says, that I was five Miles from him at bringing-to.—And to account for this difference in Distance, as out-failing my Ship one Mile and an half in half an Hour, or three Miles in an Hour, in a Breeze of Wind that might run a Ship about three or three and a half Knots an Hour; he says the Center might have more Wind, but he is not positive they had.——He says, that the *Dunkirk* was a-head of the *Cambridge* about a quarter of a Mile; that the Distance between the *Dunkirk* and *Rupert* was about four Miles, or a little better (tho' he had before said that the *Cambridge* was only four Miles from the Admiral;) that he could not see the Ships in the Rear of the Center Division, only their Lights, but if they were in their Station, he formed his Judgment of the Distance between the *Dunkirk* and *Rupert*, by the Situation of the Admiral's Lights which he saw.——This is very Extraordinary, there were five Ships between the Admiral and *Cambridge*, including the Space left for the *Effex*, that was gone to Lee-ward:——Consequently the Admiral's Ship and the *Cambridge*, which were the Extream Ships,

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with

with the five between them, must be at a greater Distance asunder than any two of those five; yet this Man in order to prove an Opening between the Center and my Division, swears to a greater Distance between two of the Five, that were next to one another, than he does to the two extreme Ships that had the five between them.

LIEUTENANT *Faulkner*, of the *Cambridge*, says, That the *Cambridge* brought to a-breast of the fifth or sixth Ship from the Enemy's Rear; that the Admiral was about three Points on the *Cambridge's* Lee-Bow, and three Miles distant, and that I was three Points on her weather Quarter, about one Mile distant; and soon after in Answer to two Questions following one another, he says he did not see any of my Division after I brought to; nor can he tell so much as what Distance the *Cambridge* was from the Ship a-head or a-stern of her.

CAPTAIN *Drummond* of the *Cambridge* says, That he is convinced I never shortened Sail before the Signal was made to bring to.—That all my Division brought-to pretty much in a Line.—That the Center did not bring to in a Line.—That I brought-to about three Miles from the Admiral, and about two from the Enemy.—That the Wind at bringing-to was East and by South, and that it shifted in the Night to North-East, which brought
me

me farther to Windward.—That the *Cambridge* was about half a Mile from the Sternmost of the Center Division when brought-to.—That the sailing and fighting Instructions are absolute; and, if so, I was immediately to bring-to upon the Signal being made, let the Distance be what it would.—That he thinks if I was not with my Division properly formed, it was more proper for the Admiral to have waited for me, and then made the Signal to bring-to.

LIEUTENANT *Le Crafts*, of the *Rupert*, says, that when the Fleet brought-to, my Division was not closed with the Center, but brought-to, to windward.—That I brought-to four Miles to windward, and a-stern of the Admiral, he can't be exact, and there was not a Mile between the Admiral and the *Rupert*. That I was a-stern of the *Rupert* about four Miles, and three or four Points on her weather Quarter, but he can't say whether more to windward, or more a-stern; and tho' he says, he could not see my Lights, or Ship, but judged me to be among the Ships of my Division, he ascertains the Distance between the Admiral and me, and at the same Time that he says the Divisions were not closed, he does not know what Distance the *Rupert*, the Sternmost Ship of the Center Division, was from the Headmost of my Division, which must have been much more obvious to his Observation.

LIEUTENANT *Williams* of the *Rupert*, says, that about Dark, the Admiral made the Night-Signal to bring-to, and thereupon the whole Fleet brought-to in the Position they were then in.—That I brought-to about three Miles, not to windward, but a-stern of the Admiral, and that he thinks I brought-to in my proper Station.—That the *Dunkirk*, or the headmost Ship in my Division was about half or three Quarters of a Mile a-stern of the *Rupert*, and that I was about a Point upon her weather Quarter.—That the Center Division, was not formed, nor brought-to in a Line of Battle.—That there was Wind enough, he believes, for the Admiral to have run up to be a-breast of the Center of the Enemy's Fleet before he brought-to.

CAPTAIN *Purvis* of the *Dunkirk*, says, he did not observe me to shorten Sail after the Signal was made for the Line a-breast till bringing-to; that when the *Dunkirk* brought-to, she was about four or five Miles from the Admiral, and about one Mile from me, and three Miles from the Enemy.—That the Admiral's Lights were upon her Beam, upon her Bow, or before the Lee-Beam; that the *Dunkirk* brought-to about a quarter or half a Mile from the *Rupert*, which Distance, I must observe, he could not easily be mistaken in, as the *Rupert* was the next Ship to him, tho' he might be in the Distance between the *Dunkirk* and the Admiral.

LIEU-

LIEUTENANT *Hughs* of the *Dunkirk*, says in his Deposition, that the *Dunkirk* at bringing-to was to windward of the Admiral, distant about three or four Miles, and was then in a Line with me. In his Examination he says, I was three or four Miles from the Admiral, and that the Admiral bore on the *Dunkirk's* Lee-bow ; and that he does not know of any remarkable Distance between the *Dunkirk* and the next Ship a-head in the Admiral's Division ; when he is asked how much Distance was necessary to be between them, his Answer is four or five Miles, which is a greater Distance than he alledges I brought-to at from the Admiral.

LIEUTENANT *Trevethick*, of the *Dunkirk*, having said in his Deposition, that the greatest Part of my Division brought-to three or four Miles to windward of the Admiral ; it was observed by the Court that I must be directly to windward : Upon which he answered, that he meant upon the weather Quarter ; that he called to windward, and it is a common thing to call to windward upon the weather Quarter.—That at bringing-to, the Admiral was about two Points upon the *Dunkirk's* Lee-bow, distant about two Miles, and that I was a little upon the weather Quarter of the *Dunkirk* about a Mile distant.—Which I must observe
proves

proves me not to have been to windward of the Admiral, when sailing in the Line a-breast before bringing-to, and that there was not any Separation between the Divisions.

I have now recapitulated the whole Evidence on the Crown Side, given in support of this second Article, except that of the Witnesses Mr. *Chapman*, *Moulden*, and *Pike*, who belonging to the *Neptune*, and being called by the Prosecutors, in Order to try what Matter could be fished out of them against me, their Depositions were read, which instead of supporting the Charge, confuted every Article of it.

UPON the whole of this Article of the Charge, I beg Leave to observe to the Court, that the Prosecutors for the Crown, and my Accuser, as Admiral *Mathews* very justly calls himself, have not produced one Witness to prove that the Center and Van of our Fleet were either in a Line together, or each Division in a Line by themselves. Had they proved an exact Order of Battle in these two Divisions by the Testimony of a Witness from each Ship, and proved a continued Line from Ship to Ship, or even had they done it by Witnesses in general; such a Proof, had this Article in any Degree been proved against me, would have aggravated my Crime, and rendered me impardonable. But instead of this Proof, they have produced Witnesses

to prove that neither the Center nor Van Divisions were in a Line with one another, nor in a Line by themselves ; but that they brought-to in Confusion and Disorder, to windward of one another:—What is more extraordinary, and what shews the Weakness of this Charge, they have produced Witnesses to prove that my Division brought-to in a regular continued Line from the *Dunkirk*, the headmost Ship in my Division, to the *Revenge* the sternmost Ship ; and they have not only proved in general that my Division brought to in a Line, but in particular (by taking the Proof from each Ship, which is a more sure and certain Proof, not liable to mistake) every Witness that they brought from my Division has positively declared his Ship brought-to at a proper Distance from the Ship next a-head and next a-stern of her ; and after bringing-to, that each Ship bore a-head and a-stern of one another, as near as Ships will allow, which after having been sailing in a Line abreast with the Wind right aft, have brought to.—They have produced thirty-two Witnesses to determine the Distance between the Admiral and me at bringing-to, thirteen of which speak it to be from about two Miles to about three.—Nine others to be about four Miles, and the rest determine it from five to nine ; tho' some of the latter have declared in their Examinations, that they neither saw the Admiral nor me at bringing-to ; consequently, I must observe, they could form no

Judg-

Judgment of the Distance between us.—There are other Witnesses who were many Miles distant from me, have declared my Division brought-to, to windward of the Line, and at the same time acknowledged there was no Line formed either by the Center or Van.—They have given Evidence against me at such a Distance, as one would think was impossible for them to see me, and, what is very extraordinary, they could not tell the Distance the next Ship a-head or a-stern to them was from them. To judge and determine at the Distance of five, six, eight, or ten Miles, or more, and not to do it within the Compass of two or three, or less, looks very suspicious.

THE Witnesses generally agree, that according to the Charge the combined Fleet brought-to in a regular well-formed Line of Battle. And the Prosecutors for the Crown have produced Witnesses to prove that the Rear-Admiral's Division brought-to about seven Miles from the Enemy.—That the Center brought-to about four, five, or six Miles from the Enemy.—Captain *Nucella*, late Lieutenant of the *Marlborough* says, two Leagues, and that my Division when brought-to, was nearer the Enemy than the Center.—Seventeen Witnesses have determined the Distance between me and the Enemy; four of them are the Captains, *Paulet*, *Godsalve*, and *Berkley*, and *Owen Griffith*, Master of the *Cambridge*, who are extravagant, and greatly disagree

disagree from the other thirteen, who have determined my Distance from the Enemy to be from about two Miles to about three, which Distance is a Mile less than the least Distance with which I am charged in bringing-to, to windward and a-stern of my Station.

THE Prosecutors for the Crown, having thus produced Witnesses to prove that I did not bring-to to windward of my Station in the Line, have also produced Witnesses to prove that I did not bring-to a-stern of my Station in the Line. Those Witnesses from the sternmost Ships in my Division, viz. the *Buckingham*, *Elizabeth*, and *Revenge*, all prove that they brought-to abreast of Ships in the Enemy's Rear, and this proves that the headmost Ship in my Division must have been closed with the sternmost in the Center-Division; because, from the Evidence that has been given, the Admiral did not bring-to abreast of the Enemy's Center, consequently as they were in a Line of Battle, he excluded me so far a-stern as he brought-to a-stern of the Enemy's Center. In that Case, where my Division was properly extended in a Line with my sternmost Ship abreast of the Enemy's sternmost Ship, there could not possibly be any Opening between the Divisions, but they must be joined, and my Ships must be very close together.

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MANY

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Y

MANY

MANY of the Witnesses have said in their Depositions, that my Division was not closed with the Center; and many have said, that it was in my Power to have closed, without knowing whether I was closed or not.—But when they were examined, they declared they neither saw the sternmost Ship of the Center Division, nor the headmost of mine. Those that have said they did see them, and have declared that there was an Opening between the two Divisions, are only two; viz. *Owen Griffith*, (who has given as extraordinary and contradictory an Evidence in this Matter as he has done in every other, and is an Evidence that has falsified himself) and Lieutenant *Le Grasse*, who, though he says there was a Separation, cannot speak to the Distance, notwithstanding he determines the Distance between me and the Admiral, which could not be so obvious to his Observation. These Witnesses can have no Weight in Contradiction to a great many more, who declare the contrary, particularly those from the *Dunkirk*, *Rupert*, and *Cambridge*, who are certainly the most competent Witnesses in this Point. The two Lieutenants and Captain of the *Dunkirk* agree in this Proof, that there was no Opening, and Captain *Purvis* positively says, the Distance between him and the *Rupert* was not more than a quarter or
half

half a Mile; as also does Lieutenant *Williams* of the *Rupert*, who limits the Distance to half a Mile.

As it has been proved that my Division brought-to in a Line; that my sternmost Ships brought-to abreast of Ships in the Rear of the Enemy, and that there was no Opening between the headmost Ship in my Division, and the sternmost Ship in the Center-Division; that my Division was in a Line of Battle, and nearer the Enemy than the Center and Van Divisions, which did not bring-to in a Line; does there remain then the least Shadow of Proof to support this Article? Had I been tryed for bringing-to with my Division in Order of Battle, while the other Divisions brought-to in Confusion and Disorder, the Prosecutors, by the Witnesses they have called, would have supported such a Charge.

THE third Article of the Charge against me is, that by bringing-to (as is alledged in the second Article) with my Division, six, five, or at least four Miles to windward of my proper Station, and by not using the Means which were in my Power during the Night of the tenth of *February*, to have got in my proper Station, I was at break of Day, on the eleventh of *February*, a greater Distance from it. That in the Morning of the eleventh of *February* about break of Day, the Admiral caused

the Signal for the Line of Battle abreast to be repeated, and made Sail, notwithstanding which I did not endeavour to come with my Division into my proper Station, whereby I and my Division were kept, and continued separate and apart from his Division six, five, or at least four Miles, notwithstanding the Wind was fair, the Weather moderate, and I might have come with my Division into our Station, if I had endeavoured so to do, agreeable to the Signal aforesaid.

I AM, by this third Article, charged with an Increase of Distance between the Admiral and me during the Night; and not using the Means which were in my Power to have got into my proper Station,

I ADMIT there was an Increase of Distance, and I have, I hope, accounted for the Cause of it; but as it has not appeared in Proof before the Court, that this small gradual Increase of Distance between the Admiral and me, while the Fleet lay-to, during the Night, was distinguished; but on the contrary, as many Witnesses have declared (particularly Captain *Long*) that the Difference or altering the Admiral in the Night was not perceivable, surely it is unreasonable to expect me to answer for what could not be seen, and which if I had observed, I had neither Signals nor Authority to remedy.

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THERE is such a Neglect of common Experience in Seaman-ship in this Part of the Charge, that I should have been so charitable as to have imputed it to the Gentlemen not being Seamen, who framed and drew the Charge (as Mr. *Bellas*, who seems to pretend to Knowledge and Skill in Sea-Discipline, was not then a Prosecutor) had not Mr. *Mathews*, in the Queries he sent me after the Action, determined it to have been my Duty to keep in the Line during the Night, notwithstanding the Alteration of the Wind. In which Queries I beg Leave to observe, he charges me with being five Miles from him in the Morning at break of Day ; consequently, as there was an Increase of Distance between Night and Morning, according to the Charge and the Evidence given, which may be computed to be about two Miles ; at that Rate, my Distance from him at bringing-to could not be more than three Miles ; which Distance, considering the little Wind, the Swell, and Night, could not be supposed to be short of my Station above a Mile (if so much,) which is three Miles less than the shortest Distance I am charged with bringing-to at Night, to windward and a-stern of my Station.

THE Witnesses on the Crown Side have proved what I admit, that there was an Increase of Distance between me and the Admiral, as also
between

between the *British* Fleet and the combined Fleet ; except the Captains *Godsalve*, *Paulet*, and *Marsh*. But I submit to the Court, how far the Testimony of Captain *Marsh* in this Point is to be regarded, or indeed in any other with respect to my Conduct, when he himself has declared, that though he was stationed to observe the Motions of the Enemy, yet he does not know whether he or they made Sail first in the Morning, nor what Ship of the Enemy he was abreast of, nor how the *Real* then bore from him. What is very extraordinary, what is almost incredible, is, this Gentleman's so notoriously neglecting what was his immediate Duty agreeable to his own Confession, and observing with regard to my Conduct what was not his Duty. This is the more suspicious, because in the several Trials preceding mine, particularly of the Captains *Burris*, *Ambrose*, and *Williams*, he remembered nothing, notwithstanding his Station was so near to theirs, and it is hardly possible their Conduct could escape his Observation. I can't help saying, it is somewhat happy for me that my Trial did not precede those Trials ; if it had, I have Reason to think that he, as well as many others, according to all Circumstances, would have been a circumstantial positive Witness against me ; whereas now, though his Memory has appeared to be better in the Evidence he gave against me, than against any other Person, and his Observations more, notwithstanding the much greater

greater Distance between us, by which he could not form so just a Judgment; he has in no great Degree supported the Charge, but discovered great Weakness and Incapacity in himself.

LIEUTENANT *Mountford*, in his Deposition says, the Distance between the Admiral and me, was the same in the Morning as at Night; and in his Examination, he says, it was increased.

CAPTAIN *Knowler* says, in his Deposition, it was the same; and in his Examination, he says, he can't be quite sure, but he thinks I was rather farther off.

CAPTAIN *Long*, in his Deposition, determines the Increase of Distance to be about one Mile more in the Morning than at Night; but in his Examination, he says, he cannot tell how much, only that it was more.

I WILL not trouble the Court on this Point with any more of these Self-Contradictions; I will only observe, that in almost all the Depositions on the Crown Side, it is asserted, that the Weather was fair, and there was a great Swell, but that I might have made use of the Night to have got into my Station. This much almost all the Witnesses have sworn to, without affirming or being able to affirm, whether I was in my Station
or

or not. Among this last Number, who have thus proved so much Eagerness and Zeal to impeach my Conduct, is Captain *Henry Osborne*, who says, I might have gone down to the Admiral in the Night, if I was not so; that I might have gone down into my Station, because he knows no Reason to the Contrary; that he can't say, whether I did endeavour to come down with my Division. This, he says; though he himself does not remember that he ever filled or stood on to keep at a proper Distance in the Line after bringing-to. When he is asked at what Time did the Moon rise or set on the tenth of *February*? his Answer is, that he does not remember there was any Moon on the tenth; but when he is asked by the Prosecutors the same Question with little Variation (the Remembrance of which I can't help supposing he thought would in some Manner affect me) he partially remembers there was a Moon, and that it arose in the first Part of the Night, not presently after Sun-set.

BUT admitting the Increase of Distance could have been observed before Morning, the Witnesses who have said, that I might have made use of the Night to have got into my Station, or nearer the Admiral, have declared, that making Sail in the Night, after the Night-Signal was made to bring-to, would have been a breach of the Signal to bring-to. Captain *Drummond* (an Officer and a Seaman, and who delivered his Evidence like such a Person)

says

says in particular, that after the Fleet brought-to, it might have been dangerous for the Ships of my Division to have made Sail ; and that he never knew part of a Fleet make Sail in the Night, and the rest not, and that there is no Signal for it.

LIEUTENANT *Palliser*, who, tho' a Lieutenant, gave his Evidence more like an Officer and a Seaman, than most of the Captains called against me, declares, that I could not have gone nearer the Admiral after bringing-to, without a Signal for making Sail, because of the Confusion it would have occasioned in the Fleet.

CAPTAIN *Nucella* declares, that he had the middle Watch, as Lieutenant of the *Marlborough*, and that finding the Admiral to go a-head, he ordered the Sails of the *Marlborough* to be filled, and went to the deceased Captain *Cornwal* to tell him that the Admiral shot a-head, who ordered him to lye still, as the Admiral had made no Signal to make Sail.

I MENTION this Proof, because it was the Opinion of a Gentleman in general Esteem for his Skill and Knowledge, one who behaved like an Officer, and died like one; notwithstanding he was scandalously deserted by the Ships a-stern and a-head of him: And to draw a Veil over the Misconduct of the Guilty, he has, since the Opening of these Trials, been accused with Rashness and ill-timed Bravery.

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I WILL

I WILL not trouble the Court with observing farther on this part of the Article, than that there is not a Witness who has been asked, that has declared that the Admiral appointed Signals for a particular Division to make Sail after lying-by, or for bringing-to after making Sail ; nor that he did appoint a Night-Signal for the Line of Battle and make it that Night, which would have been a sure Guide to act by in the dark, and a Direction for keeping in Order of Battle in case of a shift of Wind, Current, or Indraught, which might and did occasion a Difference in the Distance of Ships from one another.

I SHALL only observe, that the Necessity of such Signals are obvious ; and that as the Discipline and Order of a Line of Battle were held in great Contempt by the Admiral, whose Duty and Interest it was to teach and support, I cannot with any shew of Justice be deemed any more answerable for the Consequences which ensued from so notorious and an Un-officer like Neglect, than I can be for not appointing such necessary Signals in Contempt and Defiance of my commanding Officer's Authority. My Business was to obey, and I flatter myself that the Court will think that I did, with that implicit Submission due from an Inferior to a Superior. Farther any Man in the Fleet might have gone perhaps with Impunity, but alas ! I durst not.

THERE

THERE are some Witnesses have said, that the Admiral made the Signal for the Line abreast, about six o'Clock on the eleventh in the Morning, and they do not all agree in the Time; but many more have said, that it was made between seven and eight o'Clock, the Time that my Witnesses have said it was made; and particularly Captain *Purvis*, the Lieutenants *Hughes*, *Cricket*, *Prescot*, *Mountford*, and *Williams*, and *James Moore*, Master, have declared the Signal to have been made at that Time.

CAPTAIN *Henry Osborne* declared, that there was no such Signal made, as the Signal for the Line a-breast; but when he was told by the Court, that it was in the Charge against me, that when the Admiral made Sail next Morning at Day-break, he caused the Signal for the Line a-breast to be repeated, and made Sail; he remembered the Signal (when he found it was to make against me) and said, that it was made about six o'Clock in the Morning.

As soon as the Increase of Distance between the Admiral and me could be perceived, it has been proved, that I made Sail before the Admiral did in the Morning, and particularly by the Witnesses, Captain *Towry*, the Lieutenants *Legge*, *Le Crafts*, *Cricket*, and *Prescot*, the Masters *Moore*, *Griffith*,
and

and *Major* ; those who speak to Time, say, half an Hour or more.

CAPTAIN *Long* (who happily for me delivers no part of his Evidence without Self-Contradictions, and Prevarications) says, in his Examination, that I made Sail before the Admiral, because I made Sail very early ; though he had before said in his Deposition, that the Admiral made Sail about seven o'Clock, with the Signal for the Line a-breast flying, and that I made Sail at the same time.

CAPTAIN *Forbes*, in Contradiction to every Witness, has declared that the Admiral made Sail a good while before Day-light, and that before Day the Admiral made the Signal to bear away, at which time he could not observe me. But this is a Mistake, that this Gentleman has inadvertently fallen into ; because as there were no Signals, except those expressed in the Sailing and Fighting Instructions, and the Signal to make Sail as directed there, which is only one, is so remarkable, and made with so great a number of Guns, that it could not possibly slip the Observation or Remembrance of every other Witness on the Crown-Side ; I am apt to believe, that as Time makes but a little Impression on the Memory, according to what Captain *Forbes* himself observed to the Court, he has therefore been led into this Mistake, as this Signal was certainly made (and only then)

then) before Day on *Monday* after the Action, when probably the Number of ten Guns alarm'd the Enemy to retire with all the Precipitation that their Condition would permit.

CAPTAIN *Paulet* (as usual) is the only Witness who has charged me with not making Sail so soon as I ought to have done in the Morning; tho' he declares that he will not pretend to say whether I wore before the Signal was made for the Line a-breast, which, he says, was made as soon as it could be seen, and as soon as the Admiral wore; and in the House of Commons he swore I did not make Sail till some time after the Admiral made Sail.

CAPTAIN *Paulet* farther says, that my Topgallant Sails were set, and is not sure whether my Topmast Studding-Sails were set or not; and that there was no Swell in the Morning. And in Answer to the very next Question put to him, he says there was a Swell: In short, there is not one Witness, except this Gentleman, who has said that I did not do my utmost to join the Center in the Morning before nine o'Clock. Even Captain *Long* in particular says, that I made all the Sail I could; Captain *Godsalve* says, that I had all my Sail set, except my lower Studding-Sails; Captain *Berkley* says, that I used my utmost Endeavours; and Lieutenant *Norbury* says, that I
made

Sail at six o'Clock, and set my Topmast Studding-Sails.

I THEREFORE submit to the Court, what Weight Captain *Paulet's* Testimony ought to have in support of this Article of the Charge against me.



The following
NARRATIVE

With a few
OBSERVATIONS

Was intended
To have been laid before the Court,

Immediately before

Pronouncing SENTENCE,

But thought afterwards to be unnecessary, as the Court had so far determined the Cause as to close the Vice-Admiral's Evidence, tho' it only contains an Abstract of the Distresses, which the Vice-Admiral labour'd under since his Suspension; as well as serves to shew the Advantages, together with the Power and Interest, which Admiral *Mathews* enjoyed and executed to the best of his Abilities, for the Destruction of the Vice-Admiral.

*Longa est injuria, longæ
Ambages*———VIRG.

Great is the Injury, the Story long.

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THOUGH my Minutes of the Evidence called against me amount to two thousand Pages in Manuscript, Folio ; yet I did intend to have recapitulated the Substance of every Witness's Testimony given in support of the Charge against me, and applied their Evidence to the several Articles ; by which Means, the Court would have had a Summary of the whole Evidence.

THIS Task, difficult and perplex'd as it is, to discuss Minutes of so great a Length and such a Nature, I had undertook since the Evidence for the Crown has been closed. But after the Motion made on *Tuesday*, concerning the unnecessary Delay in bringing this Trial to an Issue, whereby a National Expence was increased and Justice protracted, and the Satisfaction it seemed to be received with in Court, I should think it would be great Imprudence and Impertinence in me, to presume to lay before the Court, the Observations I have had Time to make ; or indeed, to trespass longer on the Time of the Court, by continuing to call Witnesses until I had gone through the Whole, and stated this prolix Evidence fully, by shewing the little Colour, Appearance and Shadow of

Proofs against me. For after all the extraordinary, and I may say unwarrantable Methods, that have been taken to procure Evidence against me, I submit to the Court whether even the Crown Witnesses, without weighing and enforcing the Evidence given on my Side, have made out any Part of the Charge? And whether their Examinations are not, in the Whole, accumulated Contradictions and Absurdities, Suppositions without Proof, Suppositions disproved, and shewn in themselves to be vain, false, and unjust?

HOWEVER, though it is now become unnecessary and improper to trouble the Court with what I did intend, and have above half finished; I am determined, in Justice to the Nation, and in Justice to my self, in order to silence every partial or malicious Tongue, (if after the impartial Proceedings and final Decision of my Judges, there should be any such in Being) to publish the Absurdities, false Conclusions, and notorious Self-contradictions of the Evidence given against me; which only to read, will sufficiently and for ever expose the Authors, and serve to shew their Falshood, Prejudice and Ignorance.

In publishing this Narrative, I shall strictly adhere to the Truth, and exaggerate no Perjury or Contradiction. But was my Fortune equal to my Inclination, the Justice due to the Nation, and in
par-

particular to my private Person, should not be confined here; I would prosecute every Perjury, and suffer none, who have conspired against my Reputation and Life, to go unpunished.

THE Foundation of the Charge having been proved to be so groundless, by such a Concurrence of Evidence so clear, full and legal, that in Consequence of the Motion last *Tuesday*, there only remains one Point for me to prove; which is, what I asserted in Court with regard to the Captains *Paulet* and *Montague*, who had severally given contradictory Accounts of the same Transaction upon Oath. Instead of retracting from my Declaration, I should have also proved the contradictory Accounts given by several other Captains and Officers, had not they made it unnecessary for me, by so notoriously contradicting themselves in the Evidence they delivered in Court, which I shall not fail to publish to the Nation, that it may be convinced what a Set of Men have given Evidence against me. But in regard to the Testimony of Captain *Paulet*, Captain *Montague*, Captain *Fortescue*, and Lieutenant *Jones*, given by them in the Honourable House of Commons, I beg leave to compare some Part of it with what they have given here, and submit it to the Judgment of the Court what Weight their Evidence ought to have in this Court, or indeed, any Evidence they may hereafter give in any Court of Judicature in this Nation.

CAPTAIN *Paulet*, (as has been proved to you by the Deposition of Mr. *Grover*, one of the Clerks who took Minutes in the Honourable House of Commons, when, in a Committee of the House, Enquiry was made into the Cause of the Mis-carriage of his Majesty's Fleet in the late Action in the *Mediterranean*,) declared in the House of Commons, having first been sworn, and having at that Time a Paper in his Hand, That on the 11th of *February*, between ten and eleven I double-reef'd my Topsails; and about the Time the Engagement began I let the Reefs out of my Topsails, and set Top-gallant-fails. In this Court Captain *Paulet* has sworn, That about nine o'Clock I reef'd my Topsails; that he thinks I took in two, but is positive I took in one, and let them out about eleven, when I made all the Sail I could, except lower Studding-fails. In the House of Commons, the Court will be pleased to observe, that the Time he says I reefed, was much about the Time he has said in this Court that I let my Reefs out and made all the Sail I could: That he was positive to two Reefs in the House of Commons; for he read his Account from a Paper, and could not be supposed to be surprized in giving an Answer to a Question. But in this Court, he is only positive to one Reef, having been taken in about nine o'Clock. In this Court he is positive I made all the Sail I could at eleven o'Clock, except lower Studding-fails; and in the House of Com-

mons

mons he has declared, that I did not let my Reefs out till the Engagement began, which according to the Evidence he gave here, was about one o'Clock, when he says I set only my Top-gallant-fails; in which there is a material Difference. So that the Time he says I continued under my reefed Topfails in the House of Commons, is the Time he has said here, that I had all my Sail abroad, except lower Studding-fails; and the Time he has said in this Court, that I continued under reefed Topfails, is the Time he said in the House of Commons that I had my Reefs out of my Topfails. Take the Proof of my Reefs being in, as declared in those two different Places, it is the proving that my Reefs were in from nine o'Clock to one o'Clock; and take the Proof of the Reefs being out, as declared in those two different Places, it is proving that the Reefs were never taken in between nine and one o'Clock.

By Mr. *Grover's* Deposition it is proved, That Captain *Paulet* swore in the House of Commons, from the Paper he had in his Hand, That at twelve o'Clock I made the Signal for one of his Officers to come on board me. In this Court, when I asked him, When I made the Signal for his Officer? he swore he never saw a Signal for the Lieutenant of the *Oxford*; notwithstanding he had before declared to the Court, that about eleven o'Clock the Signal was flying on board of me for him or his Lieutenant, when I let my Reefs out; and

and as a particular Instance he is positive of this; he says, he was obliged to make Sail in order to drop his Boat aboard, and just as he came upon my Quarter, I rounded in my Weather-braces to let my Reefs out; and he then told his Lieutenant to make haste on board, because my Ship was stop'd by that Means.—Here the Court will be pleased to observe, that he relates a Circumstance in support of his Evidence, which is not confirmed by any one Witness from the *Oxford*, but denied, particularly, by the Coxswain, who was called from the Helm to steer the Boat, and whose Eyes must have been fixed upon me while he steered the Boat on board of me; and *Woodgreen*, the Midshipman, who was quartered to pass the Word, and was on the Quarter-deck near the Captain, at the Time the Lieutenant was sent, and the Time the Boat put off, and consequently, must have heard the Words spoke, if there had been any such utter'd, as also seen whether my Weather-braces were rounded in, has declared, that he neither heard, nor saw any such Thing. But what particularly shews the Falshood of this Captain's Evidence is, his declaring to this Court, that at eleven o'Clock he sent his Officer on board, the Signal being then flying: And in the House of Commons he swore I made the Signal at twelve; which, if true, the Circumstance so confidently related by him, of sending his Boat on board my Ship at eleven, must be false: And if I did not

make

make his Signal at twelve o'Clock, his Evidence given in the House of Commons must be false.

By Mr. Grover's Deposition it is proved, That Captain *Paulet* did swear in the House of Commons, more than once, that when I fired I was a-breast of the four sternmost Ships; yet when I asked him in Court, How these Ships bore off me when I fired? he swore he did not know how they then bore off me.

By Mr. Grover's Deposition it is proved, That Captain *Paulet* swore in the House of Commons, that I did not make Sail till some Time after the Signal was made. But he said in Court, that I wore much about the Time the Signal was made for the Line a-breast on the eleventh; that the Signal was made as soon as the Admiral wore, and so soon as it could be seen; but he cannot pretend to say whether I wore before the Signal or not.

By Mr. Grover's Deposition it is proved, That Captain *Paulet* swore, that my Ship was *three Leagues* from the *Namur* when the Engagement began. In Court he declared, that at eleven o'Clock I was six Miles from the *Namur*; and when the Admiral began to fire at the *Real* I was but six or *seven* Miles from him.

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WHEN Captain *Montague* was examined, I did not ask him a Question, because I judged by the Proof I should be able to lay before the Court, his Evidence against me would have no Weight; I shall only observe that by Mr. *Grover's* Deposition, he was as much the Means, as his single Evidence could be in the House of Commons, of impeaching the Conduct of Captain *Burrisb*, and calling him home from the Command of the *Dorsetshire*, to be tryed for his Conduct in the late Action; yet nevertheless it appears by the Minutes of the Court held at *Chatham*, he was as much the Means, as his single Evidence could be, of justifying Captain *Burrisb* at his Trial. And as there can be nothing so contradictory and opposite as the Evidence he gave in the House of Commons, and that given in Court in Justification of Captain *Burrisb*, I need not trouble the Court with a Recapitulation of the Particulars; for they are too well known to make that necessary; or to compare the different Evidence together, in order to overthrow and invalidate the Testimony given by Captain *Montague* against me. I shall only say, to impeach and load a Man in one Place, and to justify him in another, for the same Crime he accused him of, is so glaring an Instance of Wickedness, that any Observations I could make upon it, would be taking up Time to no purpose, and pre-
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suming to think that it could escape the Penetration and Judgment of the Court.

By Mr. *Grover's* Deposition it is proved, That Captain *Fortescue*, late Lieutenant of the *Oxford*, swore in the House of Commons, that he did not see the Men take in my Reefs; that he could not be certain; that he saw Men upon the Yards; that he was ordered down; and that Men did attend to take in their Topsails, but did not.—In Court, after having the same Questions put to him by me more than once, and putting him in Remembrance that he had declared upon Oath in another Place, that he was not certain, nor did see with his own Eyes my Reefs taken in, as he was ordered down; He positively swore that he did see me reef my Topsails; and that he never did declare, in the House of Commons, that he did not see me reef.

AFTER this repeated wicked Contradiction, and the Proof that has been laid before the Court by the Evidence of Lieutenant *Leitch*, and *Kirkup* (Mate of the *Oxford*,) who both swore with regard to the ill Usage and Menaces of the Captains *Paulet* and *Fortescue*, against *Kirkup* the Mate, immediately after he had been examined in the House of Commons, because he had not swore I reefed, as they did; I submit to the Court, what Witnesses these are, and what Weight their Testimony ought to have.

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By Mr. *Grover's* Deposition it is proved, That Lieutenant *Jones* of the *Romney* swore in the House of Commons, that I let my Reefs out, one after another, at nine o'Clock. In this Court, when I asked him how I let them out, he declared he could not tell, whether I had one, or two, in; but that I let my Reefs out at eleven.

By Mr. *Grover's* Deposition it is proved, That he swore in the House of Commons, that my Top-gallant Sails were abroad at ten o'Clock. But when I asked him in Court, Whether they were abroad at eight, nine, or ten o'Clock, or either of those Hours, and also put him in Remembrance that he was upon Oath, he said, he could not tell.

I ENTIRELY submit the Evidence of these four Gentlemen to the Consideration of the Court, and whether they have not thereby brought Disgrace and Dishonour upon themselves, instead of what was injuriously intended by it, which was, to take away my Reputation and Life.

I NEED not dwell upon the Industry that has been used by the Prosecutors, by the Direction (I suppose) of my Accuser, to fish for something out of the *Neptune's* Log-Book against me; but how much they have been disappointed, and how authentick the designing Practices of my
Enc.

Enemies have proved it, appears from Mr. Rowley's directing his Master to procure a Copy of the Day's Works of the tenth, eleventh, and twelfth of *February*, from some Midshipmen on board the *Neptune*, particularly *Munro*, who signed it as a Copy taken from the Log-book, the Day, or soon after the Action.

ADMIRAL *Mathews* and Admiral *Rowley* cannot but be conscious, that their Log-books were altered to their Purpose, as well as every other Ship's Log-book in the Fleet, whose Commanders they had any Influence over; and I may say it with great Truth, there were very few Log-books that were not altered, or amended to their Liking. The Fame of this Practice, which could not be a Secret in the Fleet, prompted the Master of the *Neptune*, like an honest Man, to carry the *Neptune's* Log-book with him, when he was removed from her, lest it should fall into the Hands of Admiral *Rowley*, or any other Instrument of my Accusers, who might make Alterations in it.

THE Consciousness, therefore, of those Admirals having the Log-books in general altered by their Authority or Influence, made them suspicious that the *Neptune's* Log-book, which had escaped their Hands, might possibly be altered in some Particulars, and to their Prejudice, by having the Truth plainly inserted in it, prevailed on Mr. *Rowley* to make use of his Master, as an Agent,

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to procure a Copy attested by three Persons belonging to the *Neptune*, in order to prove any Alterations, in Case there had been any made in it, and to improve upon such suspicious Circumstances, as their Art and Industry might invent, or perhaps in this Manner recriminate upon me, for what they might judge would be proved against themselves: But I submit to the Court whether in this Attempt they have not proved for me, what I could not so strongly have proved for my self; and whether by this Proof, if Log-books can in any Manner be deemed a Sort of Evidence, or in Corroboration of it, my Accuser has not provided Proof against himself, especially as the Prosecutors for the Crown have applied to the Court that the *Neptune's* Log-book may be kept, in order to be made a proper Use of, in the succeeding Trial.

I WOULD observe in general with regard to those Witnesses who said any thing in their Depositions in support of the Charge against me, tho' they generally unsaid it again in their Examinations, there were all the Appearances, as well in their Persons, as the Answers they gave, of Prejudice and Prepossession against me; there were all the Indications of Fear and Trembling, Ignorance and Folly; and surely, if they only appeared in Court to speak the Truth, there needed not all those outward Signs they shew'd of Faintness, Fear, and Palpitation of the Heart: Whereas the few Witnesses that were called in my
Be-

Behalf spoke like Men, and gave their Evidence without Confusion, as plain Truth, and the Dictates of Honour and Honesty directed them.

THE Captains *Burrisb* and *Ambrose* came down here on purpose to give Evidence against me; but when they considered what little Weight the Evidence of the Guilty would have in a Court of Honour and Justice, they got themselves excused, by applying to their Principal (Mr. *Mathews*) and the Prosecutors for the Crown. Attempts were used to bring the Witnesses to give Evidence against me, who had appeared and made so sanguine and earnest a Defence on the Trials of the Captains *Burrisb* and *Ambrose*, and some of them did appear: But how vain and useless such Attempts were, I submit to the Court.

What Evidence Mr. *Hargood* the Purser, and Mr. *Savage* the Surgeon, have given in Support of the Charge against me, I submit likewise to the Court; and whether their Evidence (tho' they had been represented by Admiral *Mathews* to the Lords of the Admiralty to be such essential Witnesses, that my Trial was put off for their coming home, and they had the Honour of a Ship of War on purpose to bring them to appear against me) does not proceed from Malice and Rancour of Heart against the first Lieutenant, whom I have experienced to be a good Officer; and who, by his Captain's Evidence, never took upon him more than

than was his Duty as an active vigilant Lieutenant.

THEY have sworn to affect him, not me; and what is very extraordinary, is, that these Under-ground Officers should hear what passed in Conversation between him and me on the Quarter-deck, when no Body else heard it; — Captain *Stepney*, Mr. *Chapman*, (the Master) and Mr. *Moulden* (the Gunner) with every other Person that could be supposed to be within Hearing, and that have been examined on this Point, have declared they heard no such Conversation, as they have sworn against this Man. The Impossibility of cutting off the four sternmost Ships (even from the Beginning of the Action) as inserted in the Charge, has appeared by the Proof laid before the Court; consequently the Impossibility the greater of cutting off five, the Number they mention, so late as two Hours after the Action began, at which Time they swear they heard the Words. As I am persuaded they were never once on the Quarter-deck, between two o'Clock and the Signal being made to leave off Chace, and as the Testimony they have given is not capable of any other Disproof than what has been delivered; I think in Justice to the injured Person, I ought to vindicate him, by declaring to this Court, that he never did utter any such Words, or any thing to that Effect, which they have sworn to. — Had their Evidence in any Degree supported the Charge, it had been
vain

vain to make Proteſtations of his Innocence; and the Falſhood of his Accuſers: But as it does not affect me, and it cannot be diſproved, without proving a Negative, which in many Caſes is not to be done; but it ſo happens in this Caſe, that peculiar Circumſtances attend it, as to Point of Time, and furniſh ſuch a Proof as is not to be miſtaken, and ſhew the Clearneſs of the Impoſſibility of it. Allow then my Aſſeverations to have due Weight, and I aſk no more than that they may have as much Influence with the Court, as they have Truth.

THOUGH I have little to add which can require the further Conſideration of the Court, or give my Judges a more full Knowledge than what they have of my unfortunate Caſe; yet I muſt beg the Patience of the Court for one half Hour longer, to mention ſome Things, which having been laid before them, will in this Nation carry the greater Force, and ſerve to explain and ſupport my Innocence.

I SHALL now beg leave to lay before you as conciſe a View, as I can, of the extraordinary Steps that have been taken, to procure all the poſſible Means to work my Deſtruction, with the Advantages and great Superiority that Admiral *Mathews* has had over me, the innumerable Hardſhips I have laboured under, ſtruggling for Juſtice and a fair Deciſion; in which the Hand of
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Providence may be said to have visibly interposed, to support me from sinking under such a Sea of Troubles and Sorrows.

It appears by the Date of the first Letters from Admiral *Mathews* to his Majesty's Principal Secretary of State, that he had suffered almost three Weeks to elapse, after this fatal Miscarriage, before he sent Home an Account of the Action between his Majesty's Fleet, and the united Fleets of *France* and *Spain*.

HE was at a Loss what to write in all that Time; he knew not what to say to justify the lost Opportunity: The Stain and Dishonour brought on his Majesty's Arms, the Consciousness of his own Misconduct, the glaring Timorousness of many others in the Discharge of their respective Duties on that important Occasion, left some remaining Scruples in his Breast, and he could not yet resolve to throw the Cause of this national Disappointment upon me.

HOWEVER, he set up a new Court of Inquisition, a Sea-Tribunal, unheard-of before; trying by this Means how far I might be brought to accuse my self, and wire-draw Matter of Imputation against me. For this Purpose, ten Days after the Action, Queries were sent to me, and Answers were returned to him next Day; then, after thirteen Days Silence, followed Replies to my

my Answers, which drew from me my Rejoinder, a Paper in which I endeavour'd to do my self Justice, by confuting his wrong Conception of Discipline, the Contradictions and false Conclusions which appear throughout his Replies, and plainly shew the Weakness and Absurdity of them; and by pointing out where the real Cause of that fatal Miscarriage lay. This Piece of plain Truth gave Fire to the Train which before had been industriously laid for my Destruction; for there was but barely Time (although in the Night) for Admiral *Mathews* to read that Paper, and for the Order of Suspension to be sent to me; so that the Order seemed to have been ready wrote before the Rejoinder was received.

AND it rather seemed so to me, as no new Matter gathered from that Paper, was so much as suggested to be the Foundation of that extraordinary Order and Proceeding, nor any other Cause assigned, but such an unprecedented Instance of arbitrary Power, as no Man can ever be sure of serving a Moment under with Safety to his Reputation or himself, as the Words of the Order of Suspension are, *viz.* “ For fear that his Majesty’s Service should suffer for the Future by your Misconduct, I do hereby suspend you from all further Authority in his Majesty’s Fleet, &c.”

To put false Colours on my best Endeavours, to be accused and represented in such a Suspicious

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Light,

Light, as to appear criminal, might very well surprize and shock the most wary innocent Man alive ; it might well warm a Man of much more even Temper than my self ; yet, thank God, my Conduct upon that Occasion was as calm and circumspect as my Circumstances required.

DURING the Time these Papers passed, and until I left *Mahon*, the utmost Care was taken to stop up the Channel of Correspondence between his Majesty's principal Secretary of State and me. When any Ship was ordered to get ready to sail, if the Captain knew where, his Lips were sealed against me ; and it was Treason against the Commander in Chief, to receive Packets or Letters from me. This stabbing my Reputation in the Dark, without my having an Opportunity of doing my self Justice, to prevent my becoming the Object of publick Odium throughout the Kingdom, was the Prelude to the many Afflictions and Sorrows I have undergone, and the cruel Effects of being under the Command of an Officer, who was a Stranger to the very Principles of Justice, and acted from Wantonness of Power.

FIVE Weeks had elapsed since the Escape of the Enemy, in which Time the Fleet had been twice at *Mahon* ; the Guilty, apprehensive with regard to themselves, of the dangerous Consequences of this fatal Miscarriage, had been looking out for every Pretence to lay the Blame upon me ; they could

could not endure the Prospect of a certain Disgrace, and Punishments adequate to their Crimes. It carried them into all Manner of Excesses against me, to efface their own Ignominy : There wanted but little Cunning and artful Dexterity to stir up their Leader against me. My Rejoinder had been delivered to him ; his Pride, Ambition and Vanity were intoxicated with the Greatness of his Command ; he became soon inflamed with Rage, and all the Passions which possess a proud Spirit, when fallen from its Hopes ; and by sending me home in the ignominious Manner he did, it was concluded, that as it would prove my unavoidable Ruin and Fall, it would screen and secure the Guilty ; by which he would not only preserve his own Reputation, but give free Reins to the Hatred he always nourished.

THE Prospect was very fair and promising ; there was a Probability of my miscarrying in my Passage, either by the common Accidents of the Sea, or the Superiority of the Enemy ; but what looked best and most successful on the Side of this complicated Mischief, was my ill State of Health, having for some time before been severely afflicted with a large Swelling in my Thighs and Legs, for which I could find no Remedy till after I arrived in *England*. The great Weakness of Body and Anxiety of Mind, under which I laboured, from the Severity and Indignity with which I had been treated by the Authors of this Miscarriage ;

and the Hardships and Insults they knew must fall upon me from an injured Nation, seemed to be sufficient to break a more resolute Spirit, and much stronger Constitution than falls to my Share.

UPON this Foundation did my Enemies build their Hopes of Safety; the Necessity and Danger of their Case taught them to argue and arm themselves against me; besides, the empty Imaginations of Persons, who through the natural Propensity of all Men to believe what they wish for, easily deceive themselves, and fondly entertain, with vain Hopes, those they endeavour to engage in their Cause.

FROM these Views and Apprehensions of Security was my Suspension concerted and decreed; but what gave the finishing Stroke to this Stretch of arbitrary Power, was a Commission that had been some time before sent abroad, and was then in Admiral *Mathews's* Hand, appointing me Commander in Chief, with leave for him to resign the Command. To deprive me of this Enjoyment (the Fruit of my long Services) was exquisite Pleasure, and satisfied the two strong Passions of Hate and Love: Implacable Hatred to me, and Love to his Minion, the Rear-Admiral. This two-edged Sword was the Weapon with which this Stroke was made at my Reputation, Life, and Fortune.

BUT

BUT this Suspension I could easily bear ; and being ordered on board of the *Salisbury* to take my Passage Home under the Care of a Man who appeared to have less Humanity and Delicacy than the Keeper of a common Goal ; as it was my Deliverance from Men, who, with regard to me, could not be actuated by Honour or Justice.

AND I thank Heaven I was suspended by Admiral *Mathews*, by which I have this Opportunity given me, and enjoy the great and singular Happiness of purging myself from this heavy Charge, and of doing my self Justice before a Court that square their Proceedings and Judgments by the Rule of Honour and Justice ; and are not to be biased by a Spirit of Party, but are composed of indifferent Persons, which is the *original Cause and Basis* of all Laws, and the only Pillar by which Justice and Equity can be supported. For what Justice and legal Course of Trial could I have expected from a Court-Martial in the *Mediterranean*, whose Members were either guilty themselves, or had been made Captains by Admiral *Mathews*, or otherwise attached by the many Favours which accrue from so extensive a Power and Command ?

I ARRIVED in *England* with no other Support, than the little Stock of Credit and Reputation that I had acquired on former Services ; little indeed ! to keep me from sinking under the Pressure of the
many

many heavy and grievous Oppressions heaped upon me.

'T WAS *June* before I got to Town, where I soon experienced, that the Expectations of the People having been raised to the greatest Height, I was bitterly inveighed against as the sole Author of this national Evil and Disappointment. My Enemies had left no Stratagem nor Art untried, to inflame and raise a general Prejudice against me; great Care had been taken to omit nothing in their several Accounts and Letters sent Home, that could be a Matter of Clamour and Imputation, or calculated to stir up the Minds of a misguided Multitude against me.

THESE Reports, raised and dispersed about the Nation while I was absent, and could have no Opportunity of vindicating my self, almost universally prevailed; and my Enemies had all imaginable Success in working a baffled, disappointed People up to such violent and extraordinary Proceedings, which came at last to be strengthened, and as it were sanctified by my Appearance in Sight of the World, as a Delinquent, deprived of Authority, and sent Home in an ignominious Manner, full in the Eyes of the Publick, to take the Blame and Odium of the Failure of his Majesty's Fleet. Hard Measure! for a Man destitute of Friends, of my Age and Infirmities, to bear up against such a Weight of national Injustice and Affliction,

Affliction, such a Torrent of Persecution, Popular Prejudice and Clamour.

UNDER these Circumstances, where Life became a Burthen, where I seemed to have no Friend nor Comfort left in it, but what my own Innocence secured to me; I solicited his Majesty's Principal Secretary of State, and the last Board of Admiralty, to be brought to my Trial. I pleaded the Rights and Privileges of an *Englishman*; that the Laws were our Birth-right, and the Guide and Measure of our Actions; I writ, I spoke, and let no Opportunity escape where I could seek and sue for this Justice. And under the Fatigue and Anxiety of attending the Great, and making the most pressing Sollicitations, in the abject Condition I appeared, I had this Encouragement to hope for Success, I was become the Object of general Outcry and Odium; and by the Arts, Power, and Interest of my Enemies, universally deemed to be the sole Cause of a Miscarriage, which had brought such Reproach upon the Honour of his Majesty's Arms, and many great Evils upon this Nation in general. Hence I made the most pressing Instances, and concluded, that the Passion, Fury, and Prejudice of a misguided People would assist me, if their Violence did not do more than any Thing I could offer.

THESE were my Hopes, this my Encouragement: For however unjust it may be to take away

way an Officer's Commission from him after fifty-five Years Service, and to punish him with what is worse than Death, (as this seemed to be my unfortunate Case, from junior Flag-Officers having been promoted to the Rank above me,) I enjoyed the Satisfaction to think that a Nation thus injured, and raised to the highest Degree of Clamour against me, would not be appeased by what might appear but a pitiful Sacrifice.

SUCH a Punishment, tho' much greater or much less than I deserved, could not quench the raging Flame, but rather added Fuel to the Fire; a great deal more was wanting: For supposing me the guilty Person represented by my Enemies, it would be a Sin to let me live, and impossible to find out a Punishment too cruel for me; my Preservation lay in this Want of an adequate Punishment; and, happily for me, brought on an Enquiry.

AFTER three Months painful Attendance on his Majesty's Principal Secretary of State, and the first Lord of the Admiralty, the King's Order was issued out to their Lordships to bring me to my Trial in the most expeditious Manner, that the Circumstances of the Case would admit.

IN Consequence of which Mr. Secretary Corbet, by their Lordships Command, gave me Notice in his Letter, dated the 20th of *August* 1744, that
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their Lordships designed to have a Court-Martial held here in *England* for that Purpose, as soon as Mr. *Mathews* and I could be ready for it.

NEXT Day I answered his Letter, and acquainted him that I was ready to justify my Conduct, and wanted no other Preparation than the Arrival of my Evidences; a List of whose Names I had sent him inclosed.

AFTER three Months more had elapsed, (during which Time I had bore the heavy Censure of the Nation, and my Misfortunes, with Patience and Submission, in Hopes of having every Day an Opportunity of defending my Innocence, and clearing it from the Mistakes and general Prejudice under which I have unhappily been oppressed,) I was cruelly alarmed with the News of nine Sail of his Majesty's Ships being expected from the *Mediterranean*, without having any one of the Evidences on board, that I had, three Months before, writ to Mr. *Corbett* were necessary to my Justification.

WHERE were my Sorrows to end? it seem'd impossible for me to avoid the Snares of my Enemies. The Comfort and Satisfaction I had enjoyed since his Majesty's Orders to bring me to a Trial, could no longer support me under this additional Weight and painful Delay.

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I SAW my Adversary's Ship at the Head of these nine Sail, a Ship that had a thorough Repair, and was compleatly fitted just before she sail'd from *Portsmouth*; and therefore in a much better Condition than any one of the remaining three second Rates in the *Mediterranean*, that had been in Commission eighteen Months longer, upon Service, and above four Years since they were clean'd; in so much that while the *Namur* was able to keep the Sea, the *Barfleur* in particular was obliged to be sent into *Mahon* to be patch'd up there.

THE *Neptune*, on board of which Ship I bore my Flag that unfortunate Day; the *Barfleur*, where Capt. *Gascoigne* and his Officers were removed from the *Torbay*; the *Torbay*, where my Captain was removed with some of the Quarter-deck People belonging to the *Neptune*, were Ships the most unfit for Service of any in the *Mediterranean*: But as they bore Persons capable of vindicating my Conduct at all Events, sink or swim, they were detain'd abroad to make my Destruction the more certain.

THE Commodore, the Gentleman that commanded these nine Sail home, rose to that Preferment by my Suspension, and has been examined as a Witness against me. The Exigency and Necessity of his Majesty's Service, after my Disgrace,

grace, required a General Officer to command in the third Post; and he had a Captain appointed under him when there were two Admirals in the *Mediterranean*: But when Admiral *Mathews* resigned, and there was only one Admiral left to command, and the Exigency of the King's Service demanded an equal Number of General Officers to command his Fleet, as before in Admiral *Mathews's* Time; what is very extraordinary, what is very suspicious to a Man in my Circumstances, this Gentleman came Home, as it were to head Witnesses against me.

GOD forbid I should endeavour to fix any Blame or Imputation on my greatest Enemy without Reason. But this Court will give me leave to speak with that Modesty as becomes Justice; and with that Freedom and Plainness as becomes a Man in my Circumstances. I cannot forbear mentioning this Work of Darknes, that has not yet been perfectly brought to Light, as it was in its Nature such, as carried the greatest Certainty of my Destruction in it.

WHERE it was visible there were so many Witnesses on one Side, which like a Torrent would have bore me down, and none admitted to come Home on the other, can a candid and indifferent Person deliberate a Moment for the Reason of this Injustice and Partiality?

WHAT is more, let me account for the Power of Prejudice and Clamour against me ; let me tell this Court, that it may be known to all the World, and Posterity hereafter, what great Advantages Admiral *Mathews* has had over me ; and what Hardships I have struggled with to make my Appearance in this Place.

ADMIRAL *Mathews*, while he commanded, made a Commodore ; about twenty-two Captains ; gave about fifteen Masters and Commanders Post ; made near seventy Lieutenants ; and, in Proportion, Masters, Purfers, and all other Officers, besides many Promotions from lesser Ships to greater, giving good Cruizes, and bestowing many other Favours ; the certain Consequence of commanding so great and powerful a Fleet.

HERE are a great Number of Officers made, promoted, and attached by Gratitude, whose numberless Friends and Relations, particularly those who recommended the Persons preferred, have been equally obliged and attached to his Interests.

THIS is not all ; there were but too many whom he screen'd from the Justice of the Nation, and whose Security lay in my Destruction. This Multitude, with their Friends, Dependants, and all those that their Industry and unwearied Application could influence, raised up many Friends,
and

and might well form an Interest capable of overthrowing Truth and Innocence, in the Vindication of the Guilty, and the Misrepresentation of me.

BESIDES this formidable Interest and Power, I had in my present unhappy Situation to struggle with, there was the succeeding Commander in Chief, nursed up in his Predecessor's Bosom, who, by the Violence committed on my Person, was invested with that Command which was my prior Right, in direct Violation of the supreme Authority by which I was appointed to it.

THIS Gentleman made his Commodore too, about fifteen Captains, and gave Post to ten Masters and Commanders; he made an incredible Number of Lieutenants, and in Proportion, Masters, Purfers, Surgeons, and all other Officers. These Opportunities of binding Mankind with every other Act of Benevolence and Gratuity in the Power of a commanding Admiral, not only strengthened and added Force to the former Power and Interest (which had been formed, and since perfectly well adapted towards contributing to my Destruction) but raised another powerful Interest, equally formidable for me to contend with.

THIS last honourable Gentleman having succeeded me in my Command, having succeeded me in my Ship, not contented with so great a Superiority of Power, and infinite Advantages
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over me ; for the Good and Preservation of his Friend and Benefactor, descended from the Honour and Dignity of his Command, and became, either in Person or by his Agents, the Inquisitor of the Journals of the *Neptune*, on the 11th of *February* ; he examin'd without Controul, pick'd and cull'd out particular Persons, and fish'd for all possible Matter against me.

How much this Transaction was consistent with his Station and Character, at the Head of his Majesty's Fleet in those Seas ; how much his Authority used in this Manner, might lead Men into false and prejudicial Opinions ; how much it looked like leading to indirect Practices, or tampering with Men of so low a Rank, to become Witnesses against me, I submit to the Knowledge and Experience of this Court, in Men and Things.

BEFORE I leave this Subject, I must mention a Circumstance beyond any Thing I have yet troubled the Court with ; it is, my Ship's Company being examined by Admiral *Rowley's* Officers often, at different Times, to find out a Man to say I reef'd ; but tho' Drink (the most alluring Bait to Seamen) was offered to any Man that would say, or find another Man to say so, no such Person could be found as to accept of this Reward. I pity the Malice of my Enemies, that were reduc'd to such poor Shifts to find Matter to frame a Charge against me.

To enter in all the Particulars of the Scene of Iniquity to destroy me, would, I fear, take up more Time than is reasonable for me to ask, or the Court to allow. I shall therefore only mention one notorious Instance more, which was in order the better to support the Cause of Falshood, and weaken or divide, as much as possible, those who had Courage and Honesty, to resist Temptations and Terrors, in support of the Cause of Truth; it was confidently spread abroad in the Fleet, That Admiral *Mathews*, in Reward for his eminent Services, was made Admiral and Commander in Chief of the Fleet; and that I was punished deservedly, for the greatest Crimes that a Military Man could commit against his King and Country.

How far such Stratagems might allure or intimidate Men brought up in the Navy, under immediate Exercise of Power, and habituated to pay an implicit Obedience to the Command or Nod of the Superior, I leave to the Judgment of this Court; but, as to be silent in such a Case would be truly criminal and justly censurable, even tho' the Facts I have mentioned, are but too visible and too well known to the World, yet I cannot help thinking it necessary the Court should know from me how much I have lived in Dread, and at the Mercy of every Man, whose Evidence was his Merit, and the Cause of his Promotion:

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But among such Numbers promoted and obliged, God forbid there should not be some who have had Grace and Virtue enough to withstand all the Temptations that could be thrown in their Way.

MOST of the Gentlemen that served in that Fleet, (though many of them may have as much honest Courage as any other Set of Men living, yet they) may be truly said to be under Hopes and Fears; and how far the Spirit of Truth has prevailed with Men in their Situation, the Enquiry of the Committee of the Honourable House of Commons, and the Trials before this Court, have discovered.

ON the other hand, this Court will be pleased to view me staggering under all these Disadvantages, Discouragements, and Afflictions, passing thro' such a severe Trial, as no one ever passed thro' before, to make his Innocence abide the Test. Other Admirals may have been tried, other Men may have been loaded unjustly; but never any Man ran the Gantlop thro' such a Set of Men, where Gratitude for Favours received, Prepossession, Interest, and Terror have led their Minds, and combined to hoodwink their Honesty and Impartiality. I have had no Rewards and Punishments in my Power, no Opportunity to accumulate Wealth, or make any Friend but from the Justice of my Cause. On the contrary, my
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Troubles have bore no Proportion to my Infirmities, and the Support I have had; my Expence no Proportion to my Circumstances; and under this Pressure it can never be supposed that any Witness I have produced in my Defence, can be excited by Hope or Fear, or any other Motive but that honest Courage and Independance of Mind, which enable a Man to speak Truth.

BUT I beg Pardon for this Digression, and previously touching upon these Hardships. To return to the Point. As soon as I heard of the nine Sail of his Majesty's Ships being expected every Day from the *Mediterranean*, I writ the 16th of *November* 1744, to Mr. Secretary *Corbett*, expressing my Astonishment, that their Lordships had not been pleased (in Consequence of the King's Commands for Dispatch, and of their Intention, signified to me by his Letter of the 20th of *August* 1744, to hold a Court-Martial here in *England* upon me, and my importunate Sollicitations,) to order the necessary Evidence Home (agreeable to my Letter of the 21st of *August* 1744) on board of these nine Sail of his Majesty's Ships that were expected every Day from the *Mediterranean*, particularly as the *Namur*, Admiral *Mathews's* Ship, was one of them.

MR. *Corbett*, by his Letter to me dated the 20th of *November* 1744, return'd me this Answer, That their Lordships could not regularly proceed farther, either as to their summoning of Witnesses or other-

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wife, till Admiral *Mathews* had delivered in the Substance of his Charge against me ; that he had their Lordships Orders to write to him on that Head upon his Arrival in *England* ; which he did on the 25th of *September*, acquainting him with the Orders their Lordships had received from his Majesty, for enquiring into my Conduct at a Court-Martial ; and that therefore they desir'd to know the Particulars of what he had to charge against me, and what Evidence he desir'd might be brought to support the said Charge. To which he receiv'd an Answer, dated the seventeenth of *November* 1744, signifying, that he could not find his Papers to know the Names of some of his necessary Evidences, till two Days before ; that his Charge against me was contained in the Queries, with the Addition of one more Article, the Whole being put together in the annex'd Papers for my Information.

I THINK it necessary for me to mention the Substance of my Reply to Mr. *Corbett's* Letter ; which was, That had Admiral *Mathews* been equally eager and hasty to convict, and to justify his Order of Suspension, as he had been to injure and destroy me, he would not now, under Pretence that his Papers had been mislaid, or could not be found, have delay'd answering Mr. *Corbett's* Letter for seven Weeks.

THAT

THAT (after his Arrival in *England*) he was silent on this Subject, is certain; and that when he did write, he seemed to be forced to it by my Letter to Mr. *Corbett*, complaining of the Injustice of this Delay, contrary to his Majesty's Command to use all possible Dispatch; as it appears, his Letter is dated after mine.

HAD he produced any new Matter, except the trifling short Article, which he calls a scandalous Breach of Trust, which the shortest Memory might have retain'd, and what any Man of Candour or Humanity would have done, — even a Judge upon the Bench in the Execution of his Judicial Authority, I should not have charged him with Proneness to Subterfuge and Delay.

BUT supposing he could not find his Papers, when it was so well known, and he of all Men could not be ignorant of it, that the original Queries which contain'd his Charge were in my Hands, Copies of which had been sent to his Majesty's Principal Secretary of State, and the Lords of the Admiralty, from either of which Offices he might have had a Copy, upon applying for it; and as to the Names of some of his necessary Evidences, which he says were contain'd in the Papers mislaid, the Falseness of this idle Excuse, appears from his not applying at that Time for any Witnesses to be brought Home to support his Charge;

he having imagin'd that the nine Sail were coming, or just arrived, full freighted with as many pick'd and chosen Men of all Degrees, as were sufficient to hunt me down.

I MENTION'D in my Letter, that it became him, if his Memory could not retain the Names of his Witneses and their Informations, to have been sure to have brought such Memorandums with him, unless he thought he was accountable to none, and that trampling a Vice-Admiral under his Feet, was of no Consequence, and needed no further Enquiry than the Knowledge, that it was an Act of his Performance; and added, that I thought my self emancipated from his Oppressions when I left the *Mediterranean*; consequently I depended on their Lordships for all necessary Dispatch: For was it to depend on him, I was persuaded I should never live to see the Day of my Trial; for as much as it was his Interest to defer it, and mine to bring it on.

UPON the Receipt of this Remonstrance, their Lordships commanded Mr. *Corbett* to acquaint me, that they were sorry for every Incident that interven'd to prolong the coming on of my Trial; that they had for the quicker Dispatch requested his Grace the Duke of *Newcastle*, Principal Secretary of State, to let them have one of his Messengers, whom they would forthwith dispatch with Orders to Vice-Admiral *Rowley* to send home my Witneses, either in a Ship of War on purpose, if
his

his Majesty's Service could spare one, or else by the first Ship of War bound home.

AFTER this Delay occasioned by my Accuser, what will the Court think of those Men, those Detractors and Revilers, who published and loaded an innocent Person with Reproach, of putting off and protracting the Time of Trial, by raising Difficulties, and starting trifling Objections.

THE Court will observe, by Admiral *Mathews's* filing me the late Vice-Admiral, in the last Article of his Charge, (a Copy of which was at the Beginning of my Defence laid before them) that he concluded I was no longer in his Majesty's Service, and ceased to be a Flag-Officer, because I was suspended by his Authority. Thus, in his Opinion, I was to be prejudged, and censured unheard, agreeable to the Constitution of *Barbary*, and his own Practice in the *Mediterranean*, where I remember he dismissed two Officers without calling a Court-Martial upon them.

To depart from the fixed Rules and Forms of Justice to one that had fallen under his Displeasure, sooth'd the peculiar Vanity and Temper of this Gentleman; as it seemed to confirm my Disgrace and debase me, so it exalted him and justified his Conduct; as I could be worthy of no Regard in his Esteem, he imagined whatsoever
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was done with me, might for that Reason be looked upon to be just.

BUT I thank Heaven, in his Majesty's Service, no Man's Commission, in which he has faithfully and honestly served, is in the Power of his Superior, or stands on so precarious a Footing as his Will and Pleasure; who, perhaps to cover his own Misconduct and Faults, connives at, and herds with the Guilty, to throw the Blame upon an Inferior.

THE present Board of Admiralty having called for all the Proceedings in the Time of the late Board, for bringing me to a Court-Martial, in pursuance of his Majesty's Commands, Mr. Corbett, the twenty-ninth of January 1744, acquaints me, that their Lordships had sent Orders to Vice-Admiral Rowley to send my Witnesses immediately to England, in one of his Majesty's Ships of the Squadron under his Command.

AND on the fourth of March 1744, Mr. Corbett farther informed me, that as the Newcastle was expected soon, with my Witnesses from the Mediterranean; and as the Examination of such a Number of Witnesses upon Oath would take up a great deal of Time, and protract the coming on of my Trial; their Lordships were of Opinion, that such as were then in England should be forthwith examined, and their Depositions taken as soon

as possible; and therefore, if I would let him know what Interrogatories I was desirous should be put to them, or upon what Points they should be examined, their Lordships would give Directions to the Deputy Judge-Advocate accordingly.

AT that Time I had received a Warrant from the Speaker of the House of Commons to attend that House; for which Reason, having submitted to their Lordships whether it was a proper Time for me to send Interrogatories, before I knew the Proceedings and Resolutions of that House with regard to my self; Mr. *Corbett* replied to me, their Lordships were satisfied with my not sending them.

BUT tho' the *Newcastle* was expected so soon by their Lordships, she did not arrive at *Spithead* sooner than the twelfth of *April* 1745; her Capt. (who calls himself Mr. *Mathews's* Relation, having been promoted by him,) lay in *Gibraltar* Mould a whole Month, until repeated Orders came for his sailing; by which Means I was cruelly deprived of the Testimony of my most material Witnesses, on the General Enquiry made by the Honourable House of Commons (excepting a few, which Providence had thrown in my Way) and therefore had it not in my Power to remove every Doubt or Suspicion of my Conduct, and render my Innocence perfectly conspicuous to the entire

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Satisfaction of every Member of that Honourable House.

AND I have great Cause to be thankful to Providence, that my Accuser should become the Instrument of bringing on an Enquiry, which in many Instances hath done me Justice, and removed on himself and his guilty Brethren, the Weight of Odium and Reflection, before cast upon me; which, until then, I had singly bore the Weight of.

AT my Accuser's Arrival in *England*, it was not sufficient to glut the Violence of his Hate, to find himself generally applauded, at the Expence of my Reputation, Fortune, Tranquillity, and every Comfort of Life; but he, in the Fulness of his Vanity must insinuate, that I was screen'd from Justice by the Power of the Ministry; and from thence inferred how necessary and becoming a Subject it would be to the House of Commons, to enter into an Enquiry, to do his Valour and Conduct Justice, by perpetuating through exemplary Punishment, the Infamy of that Man whose Timorousness and Perfidy had occasioned so fatal a Miscarriage to his Country.

IN this Strain did he continue to talk; perhaps he was so unwary as to believe, that an Enquiry could be brought to hurry me on to the Stake, to Execution at once, unarmed with my Witneses,
while

while he had such Numbers servilely crouding about him ; that this Enquiry would be particular, and confined to my Conduct alone, without the Possibility of throwing any thing up in the Course of it, that might fix Blame or Imputation on himself. Whether he meant what he spoke, or thought at all about it, whatever were his Reasons or Motives, (of the Drift and Integrity of which I am no competent Judge,) it is remarkable, that this seeming Forwardness, this Licence of Tongue (without Intention) contributed towards my Preservation, and the Detection of himself and the Guilty.

WHEN it was too late, he would have fain prevented what he seemed, before, to promote, by endeavouring to prevail on his Friend, who had through him been prepossessed against me, to decline making a Motion for an Enquiry in the Honourable House of Commons : but that Gentleman was inflexible ; and from this Implication of Guilt, began to indulge Suspicions and Conjectures, not so much to my Prejudice, or any ways in his Favour, and for which Reason concluded the Performance of his Promise, and the Necessity of an Enquiry the more urgent.

THE Day I attended the Honourable House of Commons, in Consequence of the Speaker's Warrant, I knew not that I had a Friend in the World. Those, who had formerly been my warmest
F f Friends,

Friends, and hugg'd me in their Bosoms, did on all Occasions look suspicious and cold upon me; and when ever I propos'd entering on the Particulars of my Cause, they desired to be excused, and immediately deserted my Company under Pretence of Business.

I LEFT my House in the Morning with the severe Agitations of a Mind and Body, worn out and broken by Oppression; under the anxious Apprehensions of a Man, who finds himself called before the Grand Inquest of the Nation; at which Bar, no Man ever appeared under a greater Weight of Popular Clamour, or was less provided with Evidence, to set his Innocence in a clear Light, and to go through an Enquiry of that Kind. On the other hand, I beheld my Adversary seated in that House, in some Measure at the Expence of my Character; I saw him surrounded with the Witnesses which the nine Sail had brought home, cringing on all Occasions, and paying their Leader implicit Acts of Obedience in every Avenue to that House; in so much that the Court of Requests seem'd, by the Faces and outward Behaviour of the Persons I saw, to appear to be another *Mediterranean*.

UNDER these notorious Discouragements, where my Innocence was my only Screen and Support, and the Justice of the Honourable House

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of Commons was my Refuge; Admiral *Mathews* was first examined in his Place, where he deliberately and solemnly avowed, that I was the sole Cause of the Miscarriage of his Majesty's Fleet; and that no other Person was culpable, or any ways contributed to that Misfortune. But with what Face of Justice or Equity he could make such a Declaration, I submit to this Court, whose Judgments have already, in the preceding Trials, falsified him to the World.

WHEN I was examined, (among the many Instances I experienced of the Impartiality and Candour of the Honourable Committee of that House) at my first setting out, I was directed not to answer any thing, which might lead to accuse my self; but however tender they might be of that great Principle of Justice, and however necessary they might think to make it a special Instruction to me, I was under no Restraint; I was sure the farther the Honourable Committee would be pleased to examine into that Affair, the more they would be convinced of my Innocence.

I HAD no sooner made them sensible that their Detestation was drawn upon me by the Arts and Industry of my Enemies, and want of Opportunity of understanding the Truth of my unfortunate Case; I had no sooner enjoyed the unspeakable Happiness of clearing up some Mistakes, and laying open some Facts that were not known or un-

derstood before, than I could well distinguish a great Surprize, that a Matter represented in so different a Light, and about which my Enemies had made so much Noise and Clamour, should at last come out so fair with regard to my Conduct. It happened luckily for me, tho' much to the Disreputation of the Officers of the Navy in general, that many of those who were examined were not sufficiently prepared, or instructed to answer the Questions put to them; nor had Sense or Capacity to stand a strict Examination and give their Evidence clear and distinct; instead of which they contradicted themselves, and related such Inconsistencies as were not to be reconciled. They shewed a remarkable Readiness to answer any Question which seemed to lead to my Condemnation; and on the contrary, they gave great Offence to the Honourable Committee, by making evasive Answers to the Questions which were put to them relating to any part of Mr. *Mathews's* Conduct, where no Blame could be fixed upon me.

THEIR Eagerness to speak against me, whether by positive or direct Evidence, or by Insinuations, weak and insufficient Proofs, little Guesses, and consequential Surmises, joined to an obstinate Backwardness, which obliged the Honourable Committee, as it were to extort out of them, whatever they gave in Evidence against Mr. *Mathews,*

thews, in a great Measure destroyed the Weight of their Testimony against me, and did enforce and strengthen their Testimony against Admiral *Mathews*. In this Manner was the Truth discovered; and the fraudulent Evidence they offered, detected, to the open Disgrace of themselves, and my Justification.

THE Honourable Committee was under no Difficulty of forming a Judgment, but at last was enabled by a Concurrence of clear and full Evidence to come to the Resolutions they did; and the Commander in Chief, and six Captains were ordered to be tried, who thought to escape the Justice of the Nation, by my Destruction.

MR. *Corbett*, on the twelfth of *April* 1745, after the Address had been presented by the Honourable House of Commons, writ to me, that the Lords of the Admiralty intending in two or three Days to send a clean Sloop with Dispatches to Vice-Admiral *Rowley* in the *Mediterranean*, and to return immediately from thence to *England*, he was commanded by their Lordships to let me know it, to the End, that if I wanted any Persons to be sent for Home to give Evidence at any of the Courts-Martial (which the Honourable House of Commons had addressed his Majesty might be held upon the Persons named in the said Address) I might send a List of their Names, upon which their Lordships would order Mr. *Rowley* to send them home.

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IN my Answer to this Letter of the same Date, I acquainted him, that for my Part I wanted no more Evidence than those coming Home in the *Newcastle*; and when ever she arrived, as I apprehended there would be then nothing to prevent the Court-Martial being held on me, I hoped their Lordships would be pleased to give the necessary Orders; but as to sending for any Witnesses to give Evidence at the Trial of any other Person, I thought it did not become me, who could not legally prosecute, though it was certain that I did intend from the Beginning, so soon as my own Trial should be over, to have presented a Charge to their Lordships against Admiral *Mathews*; but the Enquiry in the Honourable House of Commons having intervened and taken the Prosecution out of my Hands, while I lay under an Accusation my self, it should never with Justice be said of me, that Recrimination was any part of my Defence.

MR. *Corbett* replied next Day, that the *Newcastle* was arrived, but that their Lordships apprehended I could not yet be brought to my Trial; for Admiral *Mathews* had requested that the Purser, and late Surgeon of the *Neptune* might be sent for Home, whom he had represented to be essential Evidences to enable him to make good his Charge against me; and that their Lordships had sent Orders by several Ways to Vice-Admiral *Rowley* to
send

send them Home, and had then repeated the same by a Sloop that was going out to him.

To remonstrate against this injurious Delay, I made Extracts of all the Letters which had passed between Mr. *Corbett* and me, in relation to the Coming on of my Trial; in which were inserted, the repeated Declarations of their Lordships, that as soon as the *Newcastle* was arrived they would give immediate Orders for holding a Court-Martial upon me; Admiral *Mathews's* Delay of seven Weeks at his Arrival in *England*; the nine Sail being arrived; the many Opportunities that he had had; and the only Opportunity that had been given me, which he also made use of.

THIS was the Method I took to appeal to the Justice of their present Lordships, who in all their Proceedings acted indifferently and impartially, and without Distinction of Persons; submitting to their Judgment whether the Objection Admiral *Mathews* then made, to obstruct the Justice, at that Time my indubitable Right, ought to be regarded, and whether I might ever expect to be tried, if repeated Scruples and Objections raised by him, were thus admitted to be of any Weight and Consideration.

I THINK it necessary to mention these Circumstances, to make it appear I refused to interfere

ferre or concern my self in the Prosecution of Admiral *Mathews*, as well as to shew such Subterfuges, as any Man but himself would have been ashamed of, after his Representations of my Conduct, to retard and prevent the Coming on of my Trial.

By a Letter dated the twenty-fifth Day of *May* 1745, Mr. *Sharpe* desires leave to wait on me, in order to receive my Instructions the better to enable him to prepare the proper Charge against Admiral *Mathews*. Which Application from that Gentleman I thought unseasonable and improper; for in my Situation I apprehended it to be premature, and that I had nothing to do with the Prosecution of Admiral *Mathews*.

BUT on the twenty-eighth of *June*, 1745, Mr. *Corbett* wrote to me, that their Lordships being determined to hasten the Trials of Admiral *Mathews*, and the other Officers to be tried, as soon as possible, they had sent Orders to Mr. *Sharpe* to attend me to take such Informations, as I should give him against any of them; and they desired I would accordingly do it, when he waited upon me. And in another Letter from Mr. *Corbett* he tells me, that their Lordships think me ill founded in my Opinion, that it was premature to deliver into the proper Persons before my Trial, what Informations I could give of the Conduct of
Ad-

Admiral *Mathews*, because the Charge being not my own, but in his Majesty's Name, I was no longer regarded in the Light of a Prosecutor, and therefore the Informations I should then give before my Trial would stand on a better Foot of Credit, than (in case any Censure should pass upon me at my own Court-Martial) the same would afterwards do, which might then be more liable to Suspicion of Recrimination.

Mr. *Sharpe* and Mr. *Crespigny* having also waited on me in consequence of their Orders, and told me the Opinion of Council on that Point, I thought it my Duty no longer to hesitate, but to comply with their Lordships Directions, strengthened by the Advice of Council.

THESE repeated Dictates of Authority and Applications will amply justify to the Court and to Posterity, the Part I have been under a Necessity of taking in the Prosecution of these Gentlemen: For tho' I have met with Treatment, and was in Circumstances, which perhaps one would have imagined might justify any Part I could possibly take in a legal Prosecution, without any Scruples, or what may be called an unseasonable Delicacy; yet I do solemnly protest, that no part of my Conduct in this Transaction has proceeded from any Resentment for my Sufferings, but from a sincere Endeavour to defend myself, by pointing out

the true Causes of this fatal Miscarriage, and giving this Court and the Nation in general, the clearest Proof of my Innocence, which I have been incited to do more in Obedience to the Authority of the Lords of the Admiralty, than in my own Preservation.

IN framing the Charge against Admiral *Mathews*, tho' I might have been justified in the Precedent made against me, in following such a Method of Proceeding, yet I was so scrupulously fair as to deliver it to Mr. *Sharpe* before I had examined one Witness, having then but just received a Copy of the Charge against me; which I confess I thought more candid and open, than to wait and endeavour to furnish my self with more Matter by a previous Examination of Witnesses, of the like Kind with that which the Prosecutors used their utmost Application and Attendance in taking for many Weeks together, before they could gather what they thought the necessary Matter, to prepare the Charge in the Manner it was delivered to me, with this remarkable Difference to my Disadvantage, that they had examined both my Adversary's Witnesses and mine, whereas I could examine only my own.

MR. *Sharpe* and Mr. *Crespigny* by their own Confession finding the Charge I had given them to be agreeable to what they had collected from the
Wit-

nesses sent by Mr. *Mathews* to be examined against me, apprehended it was most proper to lay the Charge before the Attorney and Solicitor-General, and Mr. *Legge*, who settled and approved of the same, without making any essential Alterations.

I SHALL conclude with mentioning several Particulars which shew Admiral *Mathews's* great Partiality to Admiral *Rowley*, and his inveterate Malice against me.

It has appeared in Proof before the Court in the several Trials, that the Rear-Admiral's Division did bring-to a great Way to windward of the Admiral on the tenth at Night; that his Division was distant from the Enemy that Night, between two or three Leagues, when my Division was not above three Miles from the Enemy: Consequently, as the Charge against me says the combined Fleets were in a regular well-form'd Line of Battle, the Distance he was more than me from the Enemy, may be supposed to be the Distance he was to windward of the Admiral, which is four or five Miles. It has also appeared in Proof that he did not make sail in the Morning on the eleventh, till some time after the Admiral did; that his Signal was made to make more sail, before it was made for me to do the same; that a Captain of a Frigate was sent on purpose to order him to

make more sail, notwithstanding which, that he reefed his Topfails, and never set a Studding-sail all that Day ; that he brought-to to engage the Enemy ; that if ever he was within point-blank, it was in the latter Part of his Firing ; that he suffered the three Headmost Ships in the Van to extend themselves and leave a large Opening in his Division, by which they might have been cut off by the Enemy, without ever making their Signals, or sending them Orders to keep their Stations ; that he suffered the *Boyne* and *Chichester*, the two Ships a-head of him, to continue to throw away their Powder and Shot without being nearer than within random-shot of the Enemy, if so near.

To enumerate all the Particulars which have appeared in the Course of several Trials against the Conduct of this Gentleman, would take up too much Time; I shall only observe, that these few are sufficient to prove Mr. *Mathews's* Partiality, and his great Enmity to me. For what would have been my Fate, if those Things had been as clearly proved against me, as they have been against Admiral *Rowley* ? But what is very extraordinary, and proves that this Admiral did not even regard a Charge that was exhibited against Captain *Cooper*, (in Consequence of the Address of the Honourable House of Commons, which having not only mentioned the Names of Persons, but all other

Officers

Officers who are or shall be charged with any Misconduct in that Action) he made him a Commodore, by appointing a Captain under him, even after the Time that he must know he had been accused. I mention this to prove how much they were united in Guilt, and how much they disregarded a proper Deference and Submission to the Resolutions of the Honourable House of Commons.

IN order to point out some notorious Instances of Mr. *Mathews's* ill Usage, I beg leave to mention some things which fell from me in the Honourable House of Commons.

WHEN Admiral *Mathews* arrived from *England*, I not only saluted him my self, but I ordered all the Ships in the Fleet to do it, and went in my Boat, out of the Port of *Villa-Franca*, to meet him before he got in. Had he been of the Royal Blood, I could not have paid him more Respect, or Submission ; in return to which, immediately on seeing me, before Monsieur *Corbeau*, the Commandant of the County of *Nice*, and some Field-Officers in the King of *Sardinia's* Service, as well as a great many Captains of the Fleet, who were then on board of him, without any Regard to Decency or good Manners, my Rank and Reputation as an Officer, he began with reprimanding me, telling me he was surprized, that as I had been so long

long in his Majesty's Service, I had not yet learn'd to comply with my Instructions, in writing to him, and sending a Frigate down to *Gibraltar* to him. I answered, that I had done both, and if he had not received my Letters, nor met with the Frigate, it was not my Fault.

I HAD the Satisfaction and Pleasure to receive the King of *Sardinia's* Thanks, as also his Majesty's entire Approbation of my Conduct by a Letter from the Duke of *Newcastle*; yet it was too difficult a Task for me to please Mr. *Mathews*.

HE began his Command over me in this Manner, and superseded all the Officers I had made, even my own Secretary, and those that had been appointed before he sailed from *England*, and had come within the Jurisdiction of his Command.

THIS, I humbly apprehend, he had no more Power to do, than to supersede the Officers that Mr. *Haddock* had appointed; since I had the King's Authority to command the Fleet.

THE very next Day after he joined the Fleet, he writ Home to his Majesty's Principal Secretary of State, a notorious Falshood against me; his Words are, that he got into *Villa-Franca* Bay in the Night of the twenty-fifth of *May*, where he found

found me, with the rest of the Squadron; not one single Ship cruising from *Barcelona* to Cape *Garroupe*: Tho' there were several Ships out (by my Order) upon that Station.

IN a Letter of the twenty-fifth of *July* 1742, to his Majesty's Principal Secretary of State, he says, Had it been his good Fortune to have been sent out in Time to have taken the Command upon him, before I had appeared off of *Toulon*, it is his Opinion good Service might have been done; but from the Hour I appeared, to this Day, (meaning the Date of his Letter,) they have been hard at Work in raising of Batteries, and mounting Guns, and, as he was credibly informed, had actually mounted three hundred more than they had before.

I SHALL only observe on this Letter, that this Gentleman's Vigilance and Intrepidity could not have prevented this; and as to his Knowledge and Skill, I humbly submit them to the Judges who try him.

IN another Letter, dated the seventeenth of *July* 1743, to his Majesty's Principal Secretary of State, Admiral *Mathews* says, the Nature of his Majesty's Commands, and the Correspondence in Consequence of them is such, that it is not possible for them to be carried on but by One; and he to
be

be a Person whom his Majesty thinks proper to appoint to the Command. For he takes leave to assure his Grace, that no Person sees or knows his Instructions, or the Contents of his Correspondence, other than the absolute Necessity of the Service requires; nor indeed would it be for his Majesty's Service they should. He had an Instance of it when he left *Hieres Bay*; for he had a very difficult Task to prevail with some Persons even to send their Intelligences to me; he was obliged to give them the strongest Assurances that I should not know their Names, and to leave a Person behind, known to them, thro' whose Hands all Transactions were to pass. Besides, it would not be practicable for me to carry on the Service and Correspondence with the several Courts, without my being let into the Original of all Orders and Transactions. To all which (he says) I was then a Stranger, and so must continue till it was his Majesty's Pleasure that he should deliver up his Command to me, or he should be necessitated for want of Health to retire. In either of those Cases he must necessarily (as in Duty bound) let me into the Whole of all Transactions. While they were lock'd up in his Breast, he was answerable; but when they were once known to any Body else, he could not, would not be answerable for their being long a Secret.

I SHALL

I SHALL only observe to the Court, that he trusted me with the Command of the Fleet during the greatest Part of the Time I was in the *Mediterranean*, and that the Orders by which he attacked the Enemy were what he had from me.

IN another Letter to his Majesty's Principal Secretary of State, dated the 11th of *October* 1743, he says, he hopes his Successor will be better supported, or at least that his Capacity will enable him to execute his Majesty's Commands without complaining of Wants of any kind; and that he will answer the great Opinion his Grace has of him.

BUT what particularly proves the Malice of this Gentleman against me,—the very Day he had received leave from *England* to resign his Command to me, the Day that he had received my Commission to command the Fleet, and another Commission appointing me Vice-Admiral of the White Squadron, in order to endeavour to deprive me from commanding in chief, he writ to his Majesty's Principal Secretary of State the following Letter :

“ *Namur in Hieres Road, the 3d January 1743.*

“ Your Grace does me the Honour to tell me,

“ that you have had his Majesty's Orders to

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“ talk

“ talk with my Lord *Winchelsea* upon a fit Per-
 “ son to succeed me in my Command, in Case I
 “ should leave it. And I find his Lordship is
 “ of Opinion upon the Whole, that in that Case
 “ it must devolve upon Vice-Admiral *Lestock*,
 “ &c. I took the Liberty of giving your Grace
 “ my Opinion in regard to Mr. *Lestock* before I
 “ left *England*; I did the same to my Lord *Win-*
 “ *chelsea* and Lord *Carteret*; I shall not there-
 “ fore say any thing more to your Grace at pre-
 “ sent on that Subject, only to state one Fact,
 “ viz. Mr. *Lestock* is a Cripple at best, subject
 “ to very severe Fits of the Gout, has been lately
 “ much out of Order, and is at this present
 “ so very weak, that it was with great Difficulty
 “ he could get out of his Ship, to come on board
 “ me to be sworn for his Commission. He re-
 “ turn’d much fatigu’d, tho’ supported by his
 “ Captain up and down the Ladder. Should any
 “ Accident happen to me when we come to
 “ Action, I humbly conceive he is by no Means
 “ able to go through the Fatigue which such a
 “ Command, and in such a Conjunction will re-
 “ quire. It is true he can sit in a Chair, but
 “ that is all he can possibly do, except God
 “ should work a Miracle, in restoring him to
 “ more Strength than he has Reason to hope ever
 “ to have. So much I have presumed to say, as
 “ I think it a Duty due from me to my King and
 “ Country.”

AFTER

AFTER the Extracts of these Letters, it is unnecessary to say any thing further to shew the Malice and Hatred of this Gentleman. I shall only mention his Treatment to me when I went on board to receive his Commands the Day the Enemy came in sight of us ; I then immediately waited on him, and desired to know (as I had the Honour to command next to him, and the Enemy in fight) if he had any particular Commands or Instructions for me : He answered, NO, saying it was very cold and bid me go on board.— What Man who had the Glory and Honour of his King, and the Interest and Welfare of his Country at Heart, would not, upon such an Occasion, have banished all Animosities and old Grudges, and taken the next Officer into his Bosom, to have concerted and consulted the proper Means for the Attack and Destruction of the Enemies Fleet in fight ? But this Gentleman was implacable, which could be no Proof of his Zeal for the Good of his Country ; I shall therefore conclude, as I did in the Honourable House of Commons, “ The Persecution of Popular Clamour, and the Tortures of Misrepresentation and Calumny have had their Days against me : But now the Time is come when they must yield to Truth and Demonstration.”

At the first of this letter, I am
necessarily at the same time to the
office and that of the gentleman I shall
presented his statement to me when I went on
board to receive his commands the day the
my came in sight of the ship immediately was
of our ship, and willing to know (as I had the
Honor to command her to him, and the
the light, if he had any particular commands
of business for me; this I delivered, and I
but it was very cold and did not go on board
What time was the day and the hour of
his ship, with the interest and wishes of his
Country at heart, would not upon such an Oc-
casion, have permitted his commands and old
duties, and taken the next Officer and his
Belongings to have conveyed, and considered the
proper place for the vessel and destination of
the vessel, and in light, that this gentleman
was interested, which could be no proof of his
Not for the Good of the Country, I shall
not consider as I did in the honorable
of Command, the Protection of Persons and
Property, and the Terms of Maintenance
and Command have had that Duty, and
the law the Time is come when they may
yield to Truth and Demonstration.



THE
SENTENCE

Pronounced by the

COURT-MARTIAL,

Sitting aboard His MAJESTY's Ship

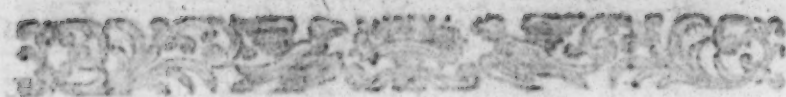
The Prince of Orange, at Deptford,

On Tuesday, the 3d of June, 1746.

ON

Vice-Admiral *LESTOCK.*





THE

SENTENCE

Pronounced by the

COURT-MARTIAL,

Sitting aboard His Majesty's Ship

The Prince of Orange, at Deptford,

On Tuesday, the 3d of June 1746.

ON

Vice-Admiral AESTOCK.



At a Court-Martial held on board His Majesty's Ship the Prince of Orange at Deptford, by several Adjournments between the 12th of March and 3d of June, 1746.

P R E S E N T,

Perry Mayne, Esq; Rear-Admiral of the *Blue*, and Commander in Chief of his Majesty's Ships and Vessels in the Rivers of *Thames* and *Medway*, and at the *Buoy of the Nore*, PRESIDENT.

Hon. *John Byng*, Rear-Admiral of the *Blue*.

C A P T A I N S.

<i>James Renton,</i>	Hon. <i>Edward Legge,</i>
<i>Charles Colby,</i>	<i>Thomas Frankland,</i>
<i>Joseph Hamar,</i>	Hon. <i>John Hamilton,</i>
<i>Smith Callis,</i>	<i>Sir Charles Molloy,</i>
<i>John Pittman,</i>	<i>Robert Erskine,</i>
<i>Thomas Hanway,</i>	<i>Charles Catford,</i>
<i>John Orme,</i>	<i>Edward Spragge.</i>

All duly sworn according to Act of Parliament.

T H E

THE Court, pursuant to an Order from the Right Honourable the Lords Commissioners for executing the Office of Lord High-Admiral of Great-Britain, &c. to *Perry Mayne*, Esq; dated the 10th of *March*, 1745, proceeded to enquire into the Conduct of Vice Admiral *Lestock*, in Relation to the late Engagement between his Majesty's Fleet and the combined Fleet of *France* and *Spain* off *Toulon*, and to try him for the same, upon the Charge prepared against him by the Prosecutors in Behalf of the Crown; and the Court having strictly examin'd the Witnesses produc'd, as well in Support of the Charge, as in Behalf of the Prisoner, and having thoroughly consider'd their Evidence, it appeared to the Court thereby,

1. THAT the Vice-Admiral led his Majesty's Fleet out of *Hieres-Bay*, when the Wind was to the North-Westward upon the Starboard-Tack; for which Reason, when the Wind shifted to the South-Eastward, and the Fleet was upon the Larboard-Tack, the Vice-Admiral with his Division must have been the Leewardmost; therefore the rest of the Fleet must bear down to him, before the Line of Battle a-breast could be form'd, or they could be to Leeward of him.

2. MANY of the Witnesses declare there was not Time to form the Line before the Signal was made
to

to bring-to, at Six at Night, from the little Wind and Confusion the Fleet was in at coming out of the Bay ; and that the Vice-Admiral, with his Division, used his utmost Endeavours to form the Line.

3. THE greatest Number of the Witnesses affirm, that the Line a-breast was nearly form'd ; and some, that it was quite form'd, at least by the Vice Admiral, and the Admiral's Divisions ; and all agree, that the Enemy was brought-to in a Line of Battle a-head. If his Majesty's Fleet was before the Wind bearing down on the Enemy in Line a-breast, the Left Wing must have been as much nearer the Van of the Enemy, than the Right Wing was to the Rear of the Enemy, as the Van of the Enemy was to Windward of the Rear of their own Fleet ; which, by the Number of Ships in the Line, could not be much less than four Miles ; consequently, the Center of his Majesty's Fleet must have been as much nearer the Center of the Enemy's Fleet, than the Right Wing of his Majesty's Fleet was to the Rear of the Enemy's Fleet, at the Center of the Enemy's Fleet was to Windward of their own Rear, which, by the same Reason, could not be much less than two Miles ; therefore the left Wing of his Majesty's Fleet must have been four Miles, and the Center two Miles, nearer the Van and Center of the Enemy, than the Right Wing was to the Enemy's Rear, when in a Line of Battle a-breast before the Wind, to be as far to Leeward as the Right Wing was : And if the Wind was on the Larboard-Quarter, as much more as the Wind

was upon that Quarter, just so much the further must the Left Wing and Center be to Windward of the Right Wing. It does not appear by the Evidence, that the Admiral was nearer than the Vice-Admiral, but the contrary; and allowing them only to have been equally distant from the Enemy, under either Circumstance, in the Line a-breast before the Wind, or with the Wind, upon the Larboard-Quarter, the Vice-Admiral must have been the Leewardmost.

Article II. THE Vice Admiral neither being to Windward, nor a-stern of his Station, but, on the contrary, to Leeward when the Signal was made to bring-to, and the whole Fleet bringing-to as soon as the Signal was made, he must have been equally to Leeward when brought-to.

2. THE Night-Signal to bring-to being made, it is to be presumed the Day-Signal for the Line of Battle could not be seen, nor be supposed to be intended to be obey'd, being superseded by a subsequent Signal, as indeed it appears by all the Witnesses who have been examin'd on that Head, that it was not seen; and the Impossibility of obeying the Signal for the Line of Battle appears from its having been the Signal for the Line a-breast, which could not be put in Execution; because, if the Fleet had brought-to upon each other's Beam as the Line of Battle a-breast requires, more than one half of his Majesty's Fleet must have been to Leeward of the Enemy's Fleet, and

and have cut their Line of Battle at Right Angles; therefore the Signal for the Line a-breast neither should or could, have been regarded: Nor will the Fleet if Sailing before the Wind in a Line of Battle a-breast, form the Line of Battle a-head upon bringing to; because in Line of Battle a-breast before the Wind, all the Ships are equally to Leeward, and in a Line of Battle a-head, the headmost are, and must be, the Weathermost; but if the Ships were nearly in Line a-breast, with the Wind two Points upon the Larboard-Quarter, and there brought to, they would nearly bring-to in a Line a-head, and then the Sternmost would be Leewardmost; therefore the Vice-Admiral must be as far to Leeward as the Admiral when brought-to.

3^{dly}, If the Admiral thought the Signal for the Line of Battle a-breast could be seen, and was to be regarded, he might have made the Day-Signal to bring-to, which could equally have been seen, and would have left it to every Body's Discretion where to bring-to, which the Night-Signal does not.

4th, If the Vice-Admiral had been to Windward of the Admiral at Night, when he brought-to; by the Wind's shifting one whole Quarter of the Compass, that is, from East South East, to North North East, (as a great Number of Witnesses and the Log-Books produced in Court, have declared it did)

he must have been nearest right a-head of the Admiral in the Morning; whereas it appears, he was abaft his Weather-Beam.

5th, If the Vice-Admiral had been to Windward of the Admiral, when the Night Signal was made, it was his Duty to have brought-to there; it being prescribed by the seventh Night-Signal and Fighting Instructions, that the Weathermost Ships shall bring to first.

6th, By the Bearings of the Admiral from the Vice-Admiral, and the Bearings of the Admiral and Vice-Admiral from the *Torbay*, *Ruffel*, and *Buckingham*, the Vice-Admiral must have been to Leeward of the Admiral.

7th, If his Majesty's Fleet was brought into great Danger, as is asserted in the Charge, by bringing-to as they did; the Cause that the Fleet was brought into such great Danger, neither did, nor could, arise from the Obedience of any Inferior Officer.

8th, If the Commander in Chief had designed the Fleet should have brought-to in a Line of Battle a-head, there were proper Methods to have been used, and Signals adapted to that purpose by the 8th, and 30th Articles of the Sailing and Fighting Instructions.

9th,

9th, THE Night being fine and clear, and the Admiral being able to see the Vice-Admiral, as well as the Vice-Admiral was to see the Admiral, both of which appear by most of the Witnesses; if the Admiral had thought the Vice-Admiral too far to Windward, and out of his Station, he might have sent a Boat to him, with Orders to join him nearer, or else have superseded him, and not have trusted his Judgment or Integrity the next Day, when the Engagement was designed by both Fleets to be brought on; but not having sent Orders to him, or superseded him, it is to be presumed, he neither thought him to be too far to Windward, and out of his Station, nor disobedient to Order and Command, as is alledged in this Article of his Accusation.

10th, LASTLY, It does not appear, that the Vice-Admiral's Division was brought to in Disorder, but, on the Contrary, that it was the most regularly formed of any Division in his Majesty's Fleet; his Ships were clear, and in Posture of Fight, and formed in Line of Battle, and he made and repeated the Signal for their so doing, as well as every other made that Day.

Article III. 1st, THE chief part of the third Article is destroyed by the Answers to the first and second; nor if it was admitted, that the Vice-Admiral

ral brought-to, to Windward, and a-stern of his Station, is the Conclusion just, that therefore he must have been further to Windward, and at a greater Distance the next Morning; because all things being equal, the Distance must have remained the same; Tho' here it must be remarked, that the Charge is inconsistent with itself, having termed the same Distance in express Terms a greater Distance; but as the Distance was increased (as it appears by all the Witnesses it was) the Court are of Opinion, that the Increase of Distance must have arisen from the Difference in the Winds or Currents, by which the Drift of the Ships became different, and perhaps in some degree from their lying-to under different Sail, and with a different Position of the Helm.

2d, If the Vice-Admiral had made Sail in the Night, without Orders from the Commander in Chief, it would have been an unjustifiable Breach of Discipline; nor have the Instructions provided any Signal for any particular Division to make Sail in the Night after bringing-to.

3d, THE Signal for the Line of Battle being repeated next Morning, as is set forth in the Charge, is a Proof, that it was hauled down over Night; and it appears by a Number of Witnesses that the Vice-Admiral made Sail at Day-break, repeated and obeyed that Signal, and used his utmost Endeavours to get into his Station and close the Center.

Article

Article IV. 1st, It appears from many Witnesses brought in support of the Charge, as well as from the Evidence in Defence of the Prisoner, that he made Sail in the Morning with his Division before the Admiral, in order to recover the Difference of Distance that had been made in the Night by the Difference of Drift.

2^d, MANY Witnesses, both Officers and petty Officers of the *Neptune* have declared, that the Vice-Admiral let all his Reefs out, and slung his Topsail Yards, and made all the Sail he could, as fast as he could, on the 11th of *February* at Day-break.

3^d, It appears by the Testimony of the Captain, and several of the Officers and Petty Officers of the *Neptune*, that the Vice-Admiral did not reef his Topsails, nor haul down his Topmast Studding-Sails, nor clue up his Top-gallant Sails, nor unslung his Topsail Yards, nor lower his Topsails, nor in any manner shorten Sail on the 11th of *February*, 'till the Signal was made by the Admiral for leaving off Chace. This too is confirmed by the Captain and several Witnesses from the *Torbay*, with the Circumstance, that the *Torbay* made all the Sail she could, and kept a-breast of the Vice-Admiral, but could not get into her Station a-head of him, which she would have been able to have done, if he had in any manner shortened Sail. It is confirmed also by Witnesses from the *Russel*, who depose, that at or
near

near the time the Vice-Admiral is said to have reefed, seeing Hands go aloft in the *Neptune*, the *Ruffel* sent her Hands up in order to reef, but seeing the Vice-Admiral did not reef, the Hands were called down again, and neither the Vice-Admiral nor *Ruffel* reefed. And it is still farther confirmed by a Lieutenant of the *Nonfuch*, whose Signal being made by the Vice-Admiral, at the time the Admiral and Center Division reefed, he continued observing the *Neptune* the whole time, in hopes that when she shortened Sail to reef, the *Nonfuch* might have an Opportunity of running up, and dropping her Boat on Board ; but not being able to come up, the Vice-Admiral sent her Orders by the *Oxford's* Boat. From all which this Assertion of his reefing seems groundless, being sworn to by few, either positively, or circumstantially ; and fully disproved, to the Satisfaction of the Court. However, if it had been true, the Admiral reefed, and there is no other Signal to reef, but the Example of the Commander in chief, therefore it would have been no Breach of Duty ; and if any Accident had befallen the *Neptune* from not reefing, when the Admiral had set the Example, the Vice Admiral must have been responsible for it.

4. Most of the Witnesses in Support of the Charge, and all who appeared on the Prisoner's Defence, have declar'd, that it was impossible for the Vice-Admiral to join the Admiral, and close the Line, before the Signal for leaving off Chace in the Evening was made ;
and

and even most of the rest have prov'd the Truth of that Declaration by Circumstances.

Article V. 1. THE Admiral by bearing down as he did upon the Rear-Division of the combined Fleet, excluded the Vice-Admiral from any Part of the Engagement, if he could have come up; for, if both Lines had been clos'd, when the Admiral engaged the *Real*, there would have been no more than one Ship of the Enemy's Fleet for the Vice-Admiral and his whole Division to have engaged.

2. THE Messages sent to the Vice-Admiral by the Admiral's two Lieutenants, were to make what Sail he possibly could to close the Line with his Division; no Signal was made for him to chase with his Division; or send Ships of his Division to chase; without which, while the Signal for the Line of Battle was flying, and more especially after the Message that was brought him by the Admiral's two Lieutenants, he could not, without Breach of Duty, either have chased, or sent Ships to chase out of the Line; nor does it appear, if he had had such Orders, that he could have come up with the four Ships of the Enemy mention'd in the Charge, before they could come up with their Admiral, as all agree they sail'd so much better than the *Neptune*.

3. It does not appear that the Vice-Admiral haul'd up, or yaw'd, (unless accidentally, when, for want of Wind, the Ship would not answer her Helm) nor

K k

steered

steered an improper Course to close the Line, and join the Center-Division.

Article VI. 1. THE greatest Part of this Article is answered by the Answers to the preceding ones, wherein it is proved, that the Vice-Admiral used his utmost Endeavours to close the Line, and join the Center-Division, which by the Signal flying, and the Message he had received, was his Duty to do.

2. THE Truth of the Circumstance brought to enforce the Charge contained in this Article is not proved; for whatever Distress the *Marlborough* was in, it does not appear the *Namur* was in any; nor even that till the *Namur* hauled off, the *Marlborough* wanted any Assistance; the *Namur* and *Marlborough* being equal to the *Real* and *Hercules*. The Vice-Admiral could not send any Ships of his Division to their Relief without breaking the Order of Battle, there being four Ships of the Admiral's Division station'd between the Vice-Admiral's Division and the *Marlborough*; which four Ships might have gone to the Assistance of the *Marlborough*; nor does it appear that any Ships of the Vice-Admiral's Division could have come up with the *Namur* and *Marlborough*, (if he had given them Orders to endeavour so to do) before the Signal to leave off Chace was made, considering the little Wind and great Swell there was, from the Admiral's first engaging to that Time.

Article

Article VII. BEING only a Recapitulation of the Six preceding Articles, is answer'd by the Answers to those Articles.

Article VIII. 1. THE notorious Breaches of Duty which the Vice-Admiral has in general Terms been accus'd of, have not been made appear to the Court by any Evidence that has been produced.

2. IT by no means appears, that the Vice-Admiral was a Principal, or any Part of the Cause of the Miscarriage of his Majesty's Fleet in the *Mediterranean*; the bringing on of the general Engagement, according to the 19th Article of the Fighting-Instructions, and the making proper Dispositions with the Fleet in the Morning, to lead down with the greatest Advantage upon the Enemy, not depending upon him.

3. IF the Vice-Admiral's whole Division had been absolutely away, and the four sternmost Ships of the Enemy (who were of no more Service in the Engagement to the Enemy, than the Vice-Admiral's Division was to his Majesty's Fleet) had also been excluded, the rest of his Majesty's Fleet would have still remain'd superior to the rest of the combin'd Fleet.

4. THE Vice-Admiral continuo'd in his Command during the whole Month of *February*. and was distinguish'd

guish'd with a particular Mark of Trust and Confidence the Day after all the Accusations were laid to his Charge ; being order'd to lead his Majesty's Fleet, in case of coming to an Engagement with the Enemy upon either Tack : It is therefore to be presum'd the Admiral did not then think him guilty of these divers notorious Breaches of his Duty.

5. *Lastly*, THE Information upon which the Charge is grounded, appears to be frivolous, absurd, and not true ; the Evidence brought to support it is insufficient to make it good ; and a great Number of Witnesses, both of those brought in its Support, and also in the Prisoner's Defence, fully refute the Whole, and every Part.

THEREFORE the Court do unanimously acquit the Prisoner of the whole and every Part of the Charge brought against him, and he is hereby Honourably acquitted.

P. Mayne, President.

<i>J. Byng.</i>	<i>John Hamilton.</i>	<i>J. Pittman.</i>
<i>E. Legge.</i>	<i>Jos. Hamer.</i>	<i>Char. Catford.</i>
<i>Ja. Renton.</i>	<i>C. Molloy.</i>	<i>Tho. Hanway.</i>
<i>Tho. Frankland.</i>	<i>Smith Callis.</i>	<i>E. Spragge.</i>
<i>Ch. Colby.</i>	<i>R. Erskine.</i>	<i>John Orme.</i>

F I N I S.

